Act had been passed, it was thought well to include it in this Code. The effect of the amendment was simply to leave the law as it stood.

The Hon'ble MR. ELLIS said that it did not appear to him that, by adopting this amendment, the Council were in any way legalizing horse-racing; they were merely saying that the provisions of section 30 were not to render unlawful certain proceedings which were allowed under Act VIII of 1867. It seemed to him that the provision was a harmless one. He objected very strongly to a change in the law being made without any opportunity for discussing whether there was anything objectionable in the law as it stood.

Major General the Hon'ble H. W. NORMAN said that he agreed with His Honour the Lieutenant-Governor, that this provision would be a blot in the Bill, although he would not go so far as His Honour and propose the repeal of an existing Act without due notice. He regretted very much that Act VIII of 1867 had a place in the Statute-book; but as it existed, he could not assent to its repeal in this irregular manner.

The Hon'ble SIR RICHARD TEMPLE thought His Honour the Lieutenant-Governor would admit that it was out of place to repeal an Act without due notice. Act VIII of 1867 was passed in due course after full discussion; and if His Honour thought the Act was objectionable, the proper course would be for him to take means to ensure its repeal after all the forms of proceedings for the introduction and discussion of a measure had been observed.

His Honour THE LIEUTENANT-GOVERNOR said that he objected to Act VIII of 1867 being consolidated with this great Code by a side-wind.

The Hon'ble MR. STEPHEN said that the Act upon which Act VIII of 1867 was a rider, was repealed by this Code, and it was much better therefore that that Act itself should stand in its proper place as a rider upon section 30 of the Code; it was a part of the law of the land, and the effect of his motion was simply to consolidate the law. As to the taking the Council by surprise, he could only say that, if His Honour knew the trouble and worry of looking through all these Acts and finding out what portions of it were necessary, he would not have raised such an objection.

The question being put,

The Council divided:—

AYE.	NOES.
His Honour the Lieutenant-Governor.	His Excellency the President.
	Hon'ble Sir R. Temple.
	Hon'ble Mr. Stephen.
	Hon'ble Mr. Ellis.
	Major General the Hon'ble H. W. Norman.
	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.
	Hon'ble Mr. Bullen Smith.

So the amendment was negatived.

The Hon'ble MR. STEPHEN's motion was then put and agreed to.

The Hon'ble MR. STEPHEN then moved the following amendments:—

That the following explanation be added to section 25:—

"*Explanation* 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the considera-

tion may be taken into account by the Court in determining the question whether the consent of the promisor was freely given;"

and that the following illustrations be added after illustration (*e*) to section 25:—

"(*f*.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

"(*g*.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given."

That the explanation to section 75 be omitted, and the following be substituted:—

"EXCEPTION.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or gives any bond for the performance of any public duty or act in which the public are interested under the provisions of any law or under the orders of the Government of India or of any Local Government, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do any act in which the public are interested."

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended by the Committee be passed.

The Motion was put and agreed to.

CARRIERS BILL.

The Hon'ble MR. STEPHEN also introduced the Bill to amend the law relating to Carriers. He said, this Bill if it had been drawn a year ago, would have been included in the Code of Contract Law which had just been passed. But that course was not taken, and we proposed to introduce it at rather a late period. We consulted the Departments of the Government which were principally interested in the matter, especially the Public Works Department, and we received a strong representation from that Department that the liberty of the Railway Companies in the matter of contracts should be restricted to a degree far beyond that to which it was restricted at present, and that they should be prohibited from limiting their liability on contracts by special conditions. It was considered that it would be improper to carry out a measure of that kind without consulting those concerned; and, accordingly, the Bill was taken out of the Contract Law, and it was proposed that it should be introduced separately and read as part of the Contract Law when it was passed. The opinion of the Government of India upon which those measures were taken would form a part of the papers in connection with this Bill. All that he would now do, would be simply to introduce the Bill.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 16th April 1872.

CALCUTTA,
The 9th April 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

GOVERNMENT OF INDIA.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Tuesday, the 16th April 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C. B.
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C. S. I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.

NATIVE PASSENGER SHIPS ACT AMENDMENT BILL.

The Hon'ble MR. CHAPMAN moved that the report of the Select Committee on the Bill to amend Act XII of 1870 (the Native Passenger Ships Act) be taken into consideration. He said:—"MY LORD, Act XII of 1870 was passed with a view of affording pilgrims proceeding to Jeddah, still further protection from the cruel hardships to which they were subjected from overcrowding.

"Owing, however, to no specific mention of steamers having been made, the Law Officers entertained doubts as to the applicability of the Act to that class of vessels. Hence, the necessity for this Bill.

"Opportunity has been taken to introduce certain alterations. It is proposed to make the Act applicable to Native Passenger Ships proceeding to every part of the world. Provision has been made to meet the case of foreign vessels leaving Turkish Ports with Native passengers bound to India. It is proposed that, whenever a Convention has been entered into between Her Majesty's Government and that of the Porte, the Commander of any vessel that arrives in a British Port without a clean bill of health obtained in the manner provided for in the Bill, that is to say, with more than the authorized number of passengers, shall be liable to a summary fine of one thousand rupees. This will be the most effectual and practical way of dealing with what is likely to be an increasing evil.

"It was originally proposed to alter the number of persons requisite to constitute a Passenger Ship from thirty to sixty. The object of this alteration was to except vessels belonging to the Peninsular and Oriental, the British India, and other well regulated Companies from what might be fairly considered vexatious and unnecessary provisions. But it has since been pointed out by the Department of the Government immediately interested in this matter, that there are a large class of small vessels carrying less than sixty passengers to the Persian Gulf; and that it would be inexpedient to exempt them from control and supervision. The old provisions have therefore been adhered to; but it is proposed to give the Local Governments discretion to exempt any vessel or class of vessels carrying not more than sixty passengers. This exemption will not of course be allowed in the case of steamers engaged in the Pilgrims-carrying trade; it is proposed, however, to give discretionary power, in the case of those vessels, not to insist on the full amount of space requisite

in the case of sailing vessels. This concession has been made in consideration of the comparatively short time likely to be occupied in the voyage.

"An amendment has been introduced with a view to saving the provisions of the Local Act XXV of 1859. It is hoped that the law, as now proposed to be amended, will prove effectual for the suppression of what are believed to be great abuses and cruelties."

The Hon'ble MR. STRACHEY said that this Bill having been originally introduced at the request of the Executive Government in the Department of which he had charge, he thought it right to say that he believed that the Bill, with the amendments that would be proposed by his hon'ble friend, Mr. Chapman, would carry out all that was necessary on the subject. There was one other change in the law contained in section 3 to which he did not desire to offer opposition but which it was right to notice, to the effect that, in the case of a steam vessel, the space to be appropriated for passengers might, under certain circumstances, be reduced. He was of opinion that that section would require to be very carefully worked, and that it would be necessary for the Local Governments to take very great care before they allowed the space to be reduced.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved the following amendments:—

That after, and as part of, the section substituted by the Bill for section two of Act No. XII of 1870, the following be read:—

"The Local Government may, if it thinks fit, exempt any steamer or class of steamers, carrying not more than sixty passengers, being Natives of Asia or Africa, from the operation of this Act, for any period not exceeding one year.

"Such exemption may be from time to time renewed for any period not exceeding one year."

That, in the definition of 'Native Passenger Ship' in section two of the amended Bill, instead of the words "sixty passengers" there be read the words "thirty passengers."

That the following section be added to the Bill as section six:—

"6. After section 38 of the said Act, the following section shall be added as section 39:—

"39. Nothing in this Act shall affect the provisions of Act XXV of 1859 *(to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal)*."

Saving of Act XXV of 1859.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

The Hon'ble MR. STEWART moved that the report of the Select Committee on the Bill for the protection of Patterns and Designs be taken into consideration. He said that respecting the principle of the Bill he did not think he could add anything to what he had already said. It provided that, in the case of local inventors of patterns and designs, they should, on compliance with the provisions of the Act, enjoy protection for their inventions for the space of three years: the English Acts provided for such protection for various periods ranging up to three years; but it was deemed to be more suitable that the period here should be the uniform one of three years. The inventors of patterns and designs who had registered their designs in England would enjoy in India the same rights and privileges as in England, and their enjoyment would be enforced in the same way, with this difference that, in England, certain remedies by way of fines were provided, while here the remedy would be of a purely civil nature.

The Bill had the approval of his hon'ble friend, Mr. Stephen, and it might be satisfactory to the Council to know that Mr. Bullen Smith also entirely agreed in the propriety of the Bill. He (Mr. Bullen Smith) had brought the subject to the notice of the Committee of the Chamber of Commerce, and the Bill had met with general approval there. MR. STEWART regarded the Bill as suitable to the necessities of the times and of commerce, and hoped the Council would regard it favourably.

His Honour THE LIEUTENANT-GOVERNOR thought the Council were well aware that, as regards the whole subject of Patents for inventions, there was a great difference of opinion and if he were willing to allow this Bill to pass, he by no means committed himself to an opinion in favour of any Patent law. Still, if Patents and Copy-rights were to be protected by law, there seemed to him to be no reason why patterns and designs should not have the same privilege accorded to them. No objection appeared to have been taken to the Bill; and HIS HONOUR attributed great weight to the opinions of the mercantile members of the Council, Mr. Bullen Smith and Mr. Stewart. The only point upon which he wished to have an opinion was as regards the words in section 4: "the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom." He wished to know whether there was any danger of a cumbrous chancery procedure being introduced into this country in these matters.

The Hon'ble MR. STEPHEN did not think that the words to which His Honour the Lieutenant-Governor referred would alter the form of procedure prevailing here in the least degree: by "civil remedy" was simply meant that fines which were leviable in England should be precluded. The words would have the effect of enabling a man to obtain a decree to restrain a person from wrongfully using a pattern or design of which he was the owner. He thought that no doubt could be entertained as to the meaning of the provision. The Bill was likely to be put in force only in rare instances, and in the large commercial towns in which English law was well understood.

As regards the Bill itself, he accepted what had been stated by His Honour that it did not pledge any one upon the difficult subject of Patents: the whole object of the Bill was simply to make actionable in India what was actionable in England. At present, if a person sustained wrong in the matter of a pattern or design, say in Rangoon, he had to go for his remedy to Westminster Hall, and the whole effect of the Bill would be to give a remedy on the spot.

The Motion was put and agreed to.

The Hon'ble MR. STEWART then moved that the Bill be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN presented a supplementary report of the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Hon'ble MR. STEPHEN also moved that the reports of the Select Committee on the Bill be taken into consideration. He said:—"My Lord, it is now about eighteen months since I had the honour of introducing this Bill, and I need not repeat what I then stated as to the reasons which rendered its introduction desirable. There is, however, a great deal to be said upon the provisions of the Bill itself.

"I need hardly remark that it is one of the most important enactments which can be brought before this Council. I am not sure that it may not be regarded as the most important, perhaps, with the exception of the Penal Code, as it is in reality little less than the body of law by which the

practical every-day business of governing this vast empire is carried on by a body of men—I mean the district officers—of whom it is difficult to say whether the smallness of their number in comparison to the incredible magnitude of their duties, or their success in performing the immense task entrusted to them, is most remarkable. The Civil Service, or at all events its most distinguished members, do not appear to bear any particular love to lawyers. I hope they will not be affronted if a lawyer takes the opportunity of his last public appearance in this country to express the profound respect with which they have impressed him. I have seen much of the most energetic sections of what is commonly regarded as the most energetic nation in the world; but I never saw anything to equal the general level of zeal, intelligence, public spirit and vigour maintained by the public service of this country, and nothing could give me greater satisfaction than to be able to believe that I had in some degree lightened their labours and strengthened their hands by increasing the clearness, simplicity and precision of the system of rules by which they are guided in the discharge of their duties.

"To return to the subject of Criminal Procedure. I think that the present Bill is not adequately described by the name which it bears, though I am not prepared to suggest a better; but its nature may be easily described. Of the benefits which England has conferred upon India, the first, and the most important is the general maintenance of peace and order, and the suppression of crime. Peace and order are ideas so familiar to the inhabitants of Western Europe, that we are, I think, a little apt to forget that they do not come by nature, like the sun, the wind and the rain. That, till they have given birth to the sentiments and institutions which protect them, they are an artificial state of things which can be maintained in a country like this only by elaborate arrangements made beforehand, and by great personal exertion and resource. This Code contains those arrangements. It is the instrument by which the peace and order of the country are secured in detail, as the Army is the instrument by which the same object is obtained in gross, and it is obvious that no degree of care which may be required to keep such an instrument in thorough working order can be regarded as excessive.

"I may perhaps be allowed to give, in a very few words, the history of the Code. It has been built up by slow degrees by the labours of successive generations of legislators ever since legislation first began in this country. The very earliest Regulations of 1793 provide for the establishment of a system for the administration of criminal justice. This system was repeatedly altered, varied and re-adjusted, so as to meet the varying wants of the country and to supply the requirements which were shown by experience to exist. The mass of legislation which thus accumulated was very large, and when the Penal Code was passed in 1860, it was considered a matter of pressing importance to prepare a Code of Criminal Procedure as quickly as possible, in order to act as a companion to it. Act XXV of 1861 was the result. It threw together all the existing law on the subject to which it related, and so consolidated an immense mass of Regulations and Acts. I will not say how many, but I think they were counted by the hundred. Act XXV of 1861 was drawn by men thoroughly well acquainted with the system with which they were concerned; but I am inclined to doubt whether they did not know it rather too well, for they certainly threw the various provisions together with very little regard to arrangement, and without any general plan. Various Acts for the amendment of the Code became necessary after it had been passed. These were consolidated by Act VIII of 1869. The result was rather to increase than to diminish the confusion which had previously existed. Act VIII of 1869 was not regarded as a final measure, and a correspondence on several points connected with it, and with the further reform of the system of criminal procedure, took place between the Government of India and the Indian Law Commissioners, who gave their opinion on various matters submitted to them in one of their very

latest reports. This report was the cause of the present Bill. I must now say what appears to be necessary upon its provisions.

"I wish, in the first place, to state distinctly my own position with regard to the Bill. Of course, I am fully responsible for it; but at the same time I must observe that I have not been so presumptuous or foolish as to attempt to introduce modifications of my own devising into the working of a system gradually constructed by the minute care and vast practical experience of many successive generations of Indian administrators and statesmen. I have carefully avoided that fault. I have regarded myself, rather as the draftsman and secretary of the Committee, by whom all the important working details of the Bill have been settled, than as its author; and to them, rather than to me, is due any merit which may attach to the practical improvements which I hope this Bill will be found to have introduced in the administration of criminal justice, and in the general maintenance of the public security. I am the more anxious to say this, because, when I last addressed the Council on this subject, I made various criticisms from the point of view of an English lawyer on the administration of justice in this country. I do not wish to retract or to modify what I then said. I still feel that the system of criminal justice in this country is open to serious objection, and would admit, in course of time, of considerable improvement. I think I could suggest means by which those improvements might be brought about quickly and gradually; but the task of the critic differs essentially in my opinion from that of the legislator. The task of the critic is to form and express his opinions as pointedly as possible, in order that they may form the subject of public discussion and gradually produce whatever effect may properly belong to them. The task of the legislator, in reference to an existing system like that of Indian Criminal Procedure, is much more like that of the editor of a law-book. It is his duty to re-arrange, to explain what experience has proved to be obscure, to supply defects, and to make such alterations as harmonize with, and carry out, the leading idea of the system with which he is concerned. The notion that any one could, if he would, or that he ought to wish, if by any accident he had the power, to make a new set of laws for his fellow-creatures out of his own head, and without reference to existing materials, is, to my mind, altogether wild and absurd. This I believe to be true everywhere, but it is emphatically and peculiarly true of India. It is simply impossible to make extensive changes in the administration of this country suddenly. The reason is obvious, though I think people in England are apt not unnaturally to overlook it. It is, that the number of officers is so small, their duties so unremitting, and the nature of the engagements between them and the Government which employs them so stringent, that the whole administration would be thrown into confusion by any change which greatly altered the duties, or involved any serious modification in the position, of the officers concerned.

"Being strongly impressed with these views, the Committee on this Bill unanimously resolved not to interfere materially with the general outline of the existing system; but as criticism of a general kind has its place and its importance, as well as legislation, I have recorded my impressions as to the administration of justice in India in a Minute, which will be published as a Selection from the Records of Government. I hope it may be of some use in future legislation, both as a record of the manner in which an English lawyer was impressed by what he saw in this country, and as an account of a system of a very remarkable character, of which, so far as I am aware, no complete account exists of modern date and in a popular and easily accessible form.

"I will now proceed to go through the Bill submitted to the Council, making such general remarks upon its contents as I feel qualified to make. Numerous important modifications in the detail of the present system have been made by the Committee. I am not specially responsible for them. Their effect, and the reasons for making them, will be stated by my hon'ble friends and colleagues, and especially by His Honour the Lieutenant-Governor, whose

attendance at the meetings of the Committee has been most assiduous, and to whose wide and long experience a very large, perhaps the largest and most important, part of the alterations made in the existing system is due.

"First, with regard to the arrangement of the Bill I may observe that, though the title of 'Code of Criminal Procedure' has been retained, it does not adequately describe the scope of the measure. It is a complete body of law on three distinct, but closely related, subjects—the constitution of the Criminal Courts, the conduct of criminal proceedings, and the prevention of crimes by interference beforehand.

"The first of these subjects is the constitution of the Criminal Courts. This is distinctly and systematically laid down for the first time in chapters II, III and IV, which enable us to repeal a large number of Acts and Regulations through which the subject-matter of the chapters in question is at present scattered in the most obscure and fragmentary manner. I need only remind the Council of the Bengal Sessions Judges Act which was passed last summer, in order to show the importance of doing this. Till that Act was passed, the law upon the subject was scattered through, and had to be inferred from several Acts and Regulations so clumsily drawn, that it appeared probable, when the matter came to be carefully examined, that most of the sentences passed by the Bengal Sessions Judges for a whole generation had been illegal. This and similar scandals will, I hope, be effectually prevented by the present Bill, which puts the whole matter in a perfectly distinct shape. This, however, is comparatively speaking a small matter. A far more important one is this. The Bill defines at once, comprehensively, and I hope quite plainly, two matters of importance about Magistrates, which are at present in a state of extreme obscurity and confusion. These are, the powers of Magistrates, and their relation to each other. No branch of the law is either more important, or, as matters stand, more confused. The District Magistrates are, in fact—though their title would hardly convey the notion to a person unacquainted with the subject—the actual Governors of the country, and there is no matter on which, according to my observation, the most experienced Indian Administrators have expended so much care and thought, or to which they attach so much importance, as the definition of their position. It had come, in the course of time and under the teaching of experience, to be defined, though in a clumsy and intricate manner; and the Courts of justice have been greatly perplexed by the difficulty of deciding what might be done by Magistrates of the District; what by full-power Magistrates; and what by Subordinate Magistrates of the first or second class. The obscurity appeared to me to arise, as most of the obscurity of law does arise, from the unfounded, but not by any means unnatural, error, into which nearly every one falls, that it is needless to express things which are generally known, and that they may therefore be taken for granted. The result is that such expressions as 'the Magistrate,' 'the Magistrate of the District,' 'full-power Magistrate,' and so forth, are continually used in the existing Acts without any definition of their powers or of their relations to each other.

"This, I hope, we have now made as clear as it can be made, though a certain degree of intricacy is inseparable from the subject-matter, and could not be removed unless the whole of the executive arrangements by which the government of the country is carried on were very deeply modified. The intricacy arises from the following circumstances:—There are three separate points of view in which Magistrates must be regarded. *First*, they have different judicial powers; *secondly*, they have different powers in a multitude of miscellaneous matters connected with procedure, and these miscellaneous powers are liable to variation in particular cases; and, *thirdly*, they stand in various relations to each other. This, no doubt, is intricate; but the intricacy could not be substantially lessened unless Government were prepared to alter the whole organization of the districts, which, of course, is out of the question. All, therefore, that can be done, is to describe the matter as clearly

and shortly as possible. This task we have attempted in the fourth chapter of the Bill. Its leading features are these :

"As regards their judicial powers, Magistrates are divided into three classes according to the maximum sentences which they can pass :—First Class Magistrates can sentence up to two years' imprisonment, and 1,000 rupees fine; Second Class Magistrates up to six months, and 200 rupees fine; Third Class Magistrates up to one month, and 50 rupees fine.

"Their miscellaneous powers are thirty-seven in number, and these are specified in section 21. In sections 20 to 30, both inclusive, we specify the powers which may be exercised by all Magistrates as such; those which may be exercised by Magistrates of the second and first class, and those which may be exercised by Magistrates in charge of a Division of a District as such. We also specify the powers with which these various classes of Magistrates may be invested, either by the Magistrate of the District, or by the Local Government.

"We next proceed to consider the Magistrates in their relation to the district in which they are quartered, and here we lay down distinctly (I think for the first time) that there shall be, in every District, a Magistrate of the District, to whom all other Magistrates in the District shall be subordinate; and that the Local Government may divide Districts into Divisions, and put Subordinate Magistrates of certain grades in charge of them.

"I think it will be found that the provisions of the Bill throw these various matters into as clear and precise a shape as the nature of the case admits of.

"Having provided for the Judges and Magistrates, we pass to the subject of public prosecutors. My own personal opinion is, that it would be desirable to separate, rather more clearly than they are separated at present, the functions of Magistrates and public prosecutors, and I should have liked to see the sections so drawn as to enable the public prosecutor to command the assistance of the Police in getting up a case for trial. The Committee were, however, of a different opinion, and considered that the public prosecutor ought to be merely an advocate for the prosecution. They are, of course, much more likely to be right than I am; but I hope that the sections as settled will at all events make it clear that a criminal trial in this country is not like a civil action; that the complainant is only a witness; and that if he does conduct the prosecution, he does so only by the permission of the Court. In passing from this subject I wish to repeat and to record my personal regret that the Bill does not provide more distinctly for it. The discussions upon it have made me aware of the fact, that a difference of opinion, which no doubt extends very deep, exists as to the position of District Magistrates. The extreme view on the one side is, that the Magistrate of District should be a sort of king, who should govern his district from bottom to top and from beginning to end, hunting up criminals, trying and punishing them in minor cases, and handing them on for punishment to the Sessions Judge in other cases. The extreme view on the other side is, that the Magistrate should sit still and hear the witnesses brought before him by others; and this difference of opinion reflects itself in a manner which is obvious enough upon the question about public prosecutors.

"We deal next with what an English lawyer would call the law of venue—the law as to the place where a trial should be held. The existing Act copies the English law on this subject, and, in particular, re-produces the bald exceptions to a vague rule which are characteristic of it. We have attempted in this chapter to state the principles on which these exceptions depend, and have turned the exceptions themselves into illustrations. We have also inserted a provision which, unless I am much mistaken, will effectually prevent the undergrowth of cases upon this matter, which has disfigured English law.

We propose that, unless it appear that actual injustice resulted from holding the trial in a wrong place, no effect at all shall follow from it.

"The last of the preliminary topics with which we propose to deal is one which has caused some discussion and attention. It relates to the subject of criminal jurisdiction over European British subjects. The proposals of the Committee upon this subject have been before the public for a considerable time, and I think I am entitled to say that, on the whole, they have been very favourably received. I see, from the amendments put upon the paper, that two at least of the members of Council who were not members of the Committee, my hon'ble friend Mr. Ellis and His Excellency the Commander-in-Chief, object to what we propose. My hon'ble friend, Mr. Ellis, thinks that, in requiring the Judges and Magistrates by whom Europeans are tried to be themselves Europeans, we concede too much to the feelings of Europeans. My hon'ble friend, the Commander-in-Chief, thinks that, in empowering first class Magistrates, being also Europeans and Justices of the Peace, to inflict upon them three months' imprisonment, we make too great a concession to the opposite view of the subject.

"My Lord, I cannot undertake to justify upon principle the terms of a compromise. A compromise must be, essentially, a matter of more or less give-and-take, and this measure is not the less a compromise, because we have been obliged to suggest its terms without actually consulting the parties or their representatives. I need not remind your Lordship and the Council of the extreme warmth of feeling which discussions upon a measure of this nature excited at no very distant date; nor need I insist on the great importance to the Government of this country of the existence of harmony between the Government and the general European population. I think I am entitled to say that the manner in which our proposals, made six weeks ago or more, have been received by the public in general, proves that they were not made injudiciously, and I should be sorry, after putting forward these proposals for the express purpose of obtaining an expression of public opinion upon them, and after obtaining what I am entitled to describe as a favourable expression of opinion, to make any material alterations in them at a time when the public views on the subject can hardly be collected. As to the particular proposals made, I shall reserve what I have to say about them till my hon'ble friends bring forward their amendments. Thus much I think I may say in general, and particularly by way of answer to a petition which has been received from certain persons at Bombay, declaring that the maintenance of any distinction at all between Europeans and Natives in this matter is a great injustice, and contrary to the principles on which the British Government ought to rule. I cannot think so: I do not wish to say anything offensive to any one; but I must speak plainly on this matter. In countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law. The Hindú has his personal law. Women who, according to the custom of the country, ought not to appear in Court, are excused from appearing in Court. Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? that whilst English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim for absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with

every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinctions.

"It may be replied that to use this argument is to desert the characteristic principles of English government, and to make a point against an antagonist by surrendering what we ourselves believe. My answer is that the general principle that all persons should be subject to the same laws is subject to wide exceptions, one of which covers this case. It is obvious enough; but possibly the best way of stating it will be to show how it applies to the particular matter before us. The English people established by military force a regular system of government, and, in particular, a regular system for the administration of justice, in this country, in the place of downright anarchy. The system for administering justice was, and is beyond all question, infinitely better than any system which the English people found here; but it neither is, nor can be, the English system. It must of necessity differ from it in its characteristic features; and although I am not one of those who blindly admire the English system of criminal justice, I say that, if English people in India like it, which they notoriously do, they have a perfect right to have it. I cannot see how the mere fact that a man has, at great expense and trouble, provided the people who live on his estate with drinking water, of which, under previous landlords, they never had enough, is to prevent him from keeping a cellar of wine for his own drinking; and even if I thought water better for his health than wine, it would be for him to judge.

"There is, no doubt, one way in which the present system is a great and real grievance to the Natives. It extends practical impunity to English wrongdoers, I think, however, that the provisions of the Bill effectually dispose of this, for they will subject every European in the country to an effective criminal jurisdiction, able to inflict prompt and severe punishment upon him for any offence which he may have committed.

"I may just notice the provisions of sections 81 and 82 on the subject of the writ of *habeas corpus*. The matter is at present in the greatest confusion, as any one may see for himself by reading the arguments on the subject which took place in the case of the Wahábí convict Amír Khán. I will not detain the Council with a legal argument; but I think it is exceedingly doubtful whether the writ of *habeas corpus* would issue, as matters now stand, to bring up a European unlawfully detained in custody in the Mofussil, and I think it pretty clear that it would not lie to bring up a Native unlawfully detained by a Native in the Mofussil. Into the minor ramifications of the subject, I need not enter. The sections in the Bill make the matter clear. An order equivalent to a writ of *habeas corpus ad subjiciendum* may be issued in respect of European British subjects throughout the whole of India. The writ of *habeas corpus* itself will continue to be issued, as at present, in the Presidency towns, but nowhere else.

"It must not be supposed that personal liberty is at all unprotected in the Mofussil. Wrongful restraint (which is very widely defined) is an offence against the Penal Code. And a person subjected to wrongful restraint can always procure his release by presenting a petition to any Magistrate for a summons or warrant against the person who wrongfully restrains him and by procuring himself to be summoned as a witness. These remarks exhaust all that I have to say on the general part of the Bill.

"I shall pass more rapidly over its detailed provisions, leaving it to my hon'ble friends and colleagues to state to the Council the grounds of such of the amendments as may appear to deserve special notice.

"Upon the question of arrangement I may observe, that Part III, which immediately follows the general provisions already described, deals with the very earliest stage of criminal proceedings—that which is left in the hands of the Police. This is stated in the existing Code in a confused manner, and it is by no means easy for the reader of it to draw the line between the functions of

the Police and those of the Magistrate. The present arrangement, I hope, will make this quite clear. In certain cases, the Police may arrest without warrant. In those, and in certain other specified cases, they may collect evidence, and, in order to enable them to do so, it is necessary to arm them with the power of asking questions and requiring answers. No very material alteration in the present system is suggested. I would remark that there may be some degree of awkwardness in leaving the organization of the Police to be provided for by Act V of 1861 and other corresponding Acts which apply to different provinces, and in prescribing the most important of their powers and duties in this Act. No doubt the Code would be more complete if it contained the Police Acts; but there are two difficulties in the way which have prevented this arrangement. The first is, that the subject of Police organization is just one of those with which the local legislatures ought to deal. The second is, that very great differences of opinion exist on the subject, with which we are not in a position to deal in reference to the present Bill.

"On the fourth part of the Bill I need make no remark, nor have I much to say on the provisions of the fifth part, which relates to inquiries and trials; I have however one or two remarks to make upon it. Chapter XVIII contains a most important innovation upon the existing practice, and one which I hope will prove very valuable. It enables the Magistrate of the District and other first class Magistrates, if authorized by the Local Government, to try certain common and simple offences in a summary way, without the elaborate record of evidence which is required under the present law. This is substantially the procedure now followed by English Courts of Petty Session, and by the Police Magistrates in the presidency towns. As far as my opinion goes, I look upon this chapter with great satisfaction, but I am not entitled to any credit which may attach to its introduction into this Bill. It was suggested by others, who will, I have no doubt, explain its provisions more fully.

"On the chapter (XIX) which relates to trials, I may make a few observations. It embodies the law upon the subject of juries, in which we have made several important alterations. We propose that, if the Judge differs from the jury, he may refer the case for the opinion of the High Court. We also propose that the High Court in the exercise of its powers of revision may, if it thinks fit, set aside the verdict of a jury if the Judge has misdirected them. In other respects we have not altered the existing law.

"I am aware that some of my hon'ble colleagues think that we have changed the spirit of the whole system so much by these alterations, that it would have been better to sweep it away altogether. I cannot myself think so. I certainly should not have suggested the introduction of the jury system into India, if I had not found it here, and I cannot say that the opinions given of it by those who have had experience of its working are at all favourable. They were not, however, so altogether unfavourable as to induce us to take the step of recommending its total abolition. In giving the Judge power to refer to the High Court cases in which he differs from the jury, we have no doubt made a considerable alteration upon English precedents. But the alteration if adopted will be entirely in harmony with the whole spirit of Indian criminal procedure, the very essence of which is control and supervision by one set of Courts over another. We do not, of course, mean that the Judge should act in this manner in every case in which he has doubts as to the propriety of a verdict, or even in those cases in which he feels that, if he had been a juror, he would not have returned the same verdict. Our intention is, that he should exercise the power in question in those cases only in which it is necessary to do so in order to prevent a manifest failure of justice; and having regard to the strong motive which the Judge always has for avoiding all future trouble by accepting the view taken by a jury, I think there is little reason to fear that the power will be abused.

"As to the power of the High Court to revise the verdict of a jury which has been misdirected, it is nothing more than what the Court for Crown Cases Reserved does in England, in case of a misdirection which leads to a conviction. Why the same course should not be taken in case of a misdirection which leads to an acquittal, I cannot conceive.

"As to the chapter on Appeals, the only alterations which we have made are that, in certain carefully selected cases, we permit an appeal against an acquittal, and that we allow the Appellate Court to enhance sentences passed if it considers them insufficient. This alteration is one of those which I will leave it to my hon'ble friends to explain and justify.

"I need notice nothing more in the Bill till I come to Part X, which treats of the charge, judgment and sentence, or what an English lawyer would call the system of criminal pleading. For chapter XXXIII, which relates to the subject of charges, I am peculiarly responsible. The chapter was drawn by me with the view of making as clear and plain as I could a matter which, in England, has given rise to an inordinate amount of quibbling and chicanery. I hope that the sections drawn by me and accepted by the Committee will make it almost, if not quite, impossible that any failure of justice should ever take place in this country by reason of any defect in a charge; for, under these sections, the worst that can happen is, that the Court may think that the prisoner has been misled, and that he ought to have a new trial.

"The only remaining matter contained in the Bill which I need mention specially is chapter XXXVI, the first chapter of Part XI, which relates to the preventive jurisdiction of Magistrates. This chapter sets out in plain terms what is now the law (as I believe, though it is nowhere written down) as to the dispersion of unlawful assemblies by military force. It has often appeared to me to be a great hardship on military men that there should be no express written law laying down in precise terms their duty in relation to the dispersion of unlawful assemblies. The Queen's Regulations contain provisions on the subject; but they are not law; at least they have not, as regards Civil Courts in England, the force of law. Various celebrated judgments have laid down the principles of the matter very clearly, but military officers can hardly be expected to be acquainted with the Law Reports. The results of the want of clear precise knowledge on this subject have often been deplorable. Thus, for instance, in the Gordon riots in 1780, London was at the mercy of a mob for two days, because no one chose to give orders or take responsibility as to the employment of the military. At the Bristol riots, fifty years later, a great part of the town was burnt to the ground, because an officer in command of a dragoon regiment did not know that it was his duty to order his men to charge when the town was burning, and there was no Magistrate to give him orders, and I have been told of several instances in which similar evils have occurred in India. In order to show that what is enacted in this Bill is no invention of mine, but merely a statement, with but very slight additions, of the law on this important subject which has long existed in England, I will, with your Lordship's permission, read the statement of the law made by Lord Chief Justice Tindal in his charge to the Grand Jury of Bristol at a Special Commission held in 1832 after the riots :—

'By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he the authority, but it is *his bounden duty* as a good subject of the King, to perform this to *the utmost of his ability*. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace.

'It would undoubtedly be more prudent to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this, for the presence and authority of the Magistrate would restrain the proceeding to such extremities until the danger were sufficiently immediate, or until some felony was either committed, or could not be prevented without recourse

to arms; and, at all events, the assistance given by men who act in subordination and concert with the civil Magistrate, will be more effectual to attain the object proposed, than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the Magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that, whatever is honestly done by him in the execution of that object, will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil Magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly, the same exercise of discretion which requires the private subject to act in subordination to and in aid of the Magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authority, the military subjects of the King not only may, but are bound to do their utmost, of their own authorities, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of the riot, and each has authority to command all other subjects of the King to assist them in that undertaking. By an early Statute (13 H. IV, cap. 7), any two justices, with the sheriff or under-sheriff of the county, may come with the power of the county, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law: by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe, that *it is not left to the choice or will of the subject*, as some have erroneously supposed, *to attend or not to the call of the Magistrate, as they think proper*, but *every man is bound when called upon*, under pain of fine and imprisonment, *to yeild a ready and implicit obedience to the call of the Magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly.*'

"The only point on which we have—I will not say altered, but somewhat amplified—the law of England, is in reference to the responsibility of soldiers for acts done in dispersing unlawful assemblies. The English law upon this point is somewhat indefinite, and it is by no means clear that, if a Magistrate calls upon an officer to disperse an assembly, and if the officer orders his troops to fire, and if the troops do fire, and if the Magistrate is mistaken in the view which he takes of the requirements of his case, that his orders protect the officer, or that the officer's orders protect the soldier. Military men may thus be placed between two conflicting authorities. The soldier may be liable to be tried by Court Martial for disobeying orders if he does not fire, and to be tried at the Assizes for murder if he does. I will not now go into the legal aspects of the matter; but it is by no means clear that, according to the law of England, the actual necessity for the order, as distinguished from the order itself, is not the condition of the legality of an order to attack a mob by military force. This, no doubt, arose from the extreme jealousy with which English lawyers have always regarded the interference of soldiers in civil matters, and this jealousy is to be explained by historical causes which happily do not exist in this country. I think I need hardly insist upon the monstrous injustice of the rule itself, if such it is. What possible means have subordinate officers or private soldiers of knowing whether it is or is not necessary to disperse a particular assembly or to use more or less force for that purpose? To make a common soldier a murderer for shooting people whom he is ordered to shoot, because a jury afterwards thinks that it was not necessary that they should be shot, seems to me as absurd as to say that every one who deals in any way with stolen goods is to be treated as a receiver whether he knew they were stolen or not. It will, I trust, be made perfectly clear by the provisions of this Bill that no one commits a crime by any act done by him in good faith for keeping the peace. Section 483 protects the Magistrate who orders an

assembly to be dispersed by military force, if he regards the measure as necessary to the public security on reasonable grounds and in good faith. Sections 484 and 485 make it the duty of the officer in command to obey the Magistrate's requisition, and whilst they put upon him the responsibility, which he clearly ought to bear, of deciding on the manner in which the requisition is to be carried out, and of doing as little injury to person and property as is consistent with carrying it out effectually, they protect him from all responsibility for the order itself. In the same spirit, section 486 protects every inferior officer and soldier for every act done in obedience to any order which he was bound to obey by the Mutiny Act or the Indian Articles of War.

"We also propose that prosecutions for excess in acts done under these sections should not be permitted without sanction from the Local Government. My own personal experience has led me to feel, perhaps more deeply than most other persons, the necessity for such a provision as this, and has impressed me with the evils which may arise from the defective state of the law, which leaves it in the option of private persons to carry on a series of proceedings, under no public check whatever, which might break a man's heart when he is perfectly innocent. I can imagine cases in which a man who had only done his duty might be baited to death by one prosecution after another, for murder, hurt, mischief and the like, nor do I see how the Government could protect him in the absence of this provision. I do not know that such cases have as yet occurred, but nothing is more likely than their occurrence, as Native lawyers become familiarised with English Law, unless we provide for the matter beforehand.

"The principle of sanction is well established in Indian Law and is of great value, and this appears to me to be just the sort of case to which it ought to be applied.

"These, my Lord, are the remarks I have to make on the Bill as published in the Gazette. I now turn to the supplementary report, which suggests a very large number of minor amendments. Our object in publishing the Bill in the Gazette for nearly a month before we laid it before the Council, was to obtain as much detailed criticism on it as we possibly could. This supplementary report is the result. It consists principally, indeed almost entirely, of slight additions made to particular sections, for the purpose of clearing up points on which the High Courts had found it necessary to pass decisions. It would be idle to ask the Council to discuss them in detail. A few days ago, the Committee on the Bill held a final meeting, in which every one of them (except a few which were suggested and assented to afterwards) was discussed with minute care. We agreed upon the report which I now submit to the Council, and I ask your Lordship and the Council to accept it. It involves few, if any, alterations of principle, though, I believe, it will add immensely to the value of the Bill, by settling nearly every question which has been shown by experience to be capable of being raised upon it. Though I do not propose to discuss the subject in detail, I should like to make a few observations upon it. I think that it represents very fairly the amount of needless intricacy in which the law of this country is involved by the system of law-reporting which unhappily prevails here. And I would most earnestly direct the attention, both of the Government and of the public, to the evils which arise from it. I have tried to devise means for its mitigation, and I have made some remarks upon the subject in the Minute recorded by me, to which I have already alluded, and which will be published in a few days. On the present occasion, I will simply specify the evil of which I complain. All the High Courts and the Chief Court of the Panjáb have their decisions reported, and the expense of reporting them is borne, to a very great extent, by Government, which pays the reporters' salaries and subscribes very largely towards the reports. I will give a few illustrations of their character. The Bengal Law Reports for 1868, 1869, 1870 and 1871 fill six enormous volumes, and will, I suppose, fill seven, when the reports for 1871 are completed. The first instalment of the reports for 1871 is a volume of

1,000 pages. As if this was not enough, a little book, called *Sutherland's Weekly Reporter*, is published, which consists principally of prints of all the judgments delivered by all the Benches into which the High Court is divided, as well as those which are delivered in its original jurisdiction. It appears to me that if it were the intention of Government to enervate the administration of justice, to make the appreciation of legal principles impossible, and to foster all the weaknesses which are usually said to be characteristic of the Native intellect, they could not spend their money better than by encouraging a system like this. I do not believe that one case in twenty of those which are reported is at all worth reporting; and when we think what the High Courts are, it seems to me little less than monstrous to make every division bench into a little legislature, which is to be continually occupied in making binding precedents, with all of which every Court and Magistrate in the country is bound to be acquainted. Careful reports of great cases are perhaps the most instructive kind of legal literature; but I know nothing which so completely enervates the mind, and prevents it from regarding law as a whole, or as depending upon any principles at all, as the habit of continually dwelling upon and referring to minute decisions upon every petty question which occurs. It is this enormous growth of case-law which justifies, so far as they can be justified, the attacks so often made upon lawyers, and it does appear to me that no legal reform could possibly be so important as its reduction to reasonable dimensions. I have made definite and specific proposals on the subject to which I refer. I confine myself at present to the remark that I believe that the Government of India is at present spending considerable sums of money every year in impairing the efficiency and wasting the time of every judicial officer in the country. I hope that this Bill will be found to have stopped a good many of the holes which have been detected in this Code, and to have superseded an immense number of the cases which have been decided on. However, the impression made upon my mind by going through large numbers of them was not, I must confess, by any means favourable. The great mass of them ought never to have been reported at all.

"This concludes what I have to say on the Bill which I now ask the Council to take into consideration; but there is one other subject to which I must refer before I end my speech. I obtained leave some time ago to introduce a Bill for assimilating the Criminal Procedure of the High Court on the original side to that of the other Courts. A Bill had been prepared with that object in the Legislative Department; but I think its form might be considerably improved; and as I do not wish to introduce an imperfect measure, I will content myself with saying how, in my opinion, such a measure ought to be drawn.

"It might begin by providing that, in the presidency towns, there should be two grades of Criminal Courts, the Courts of the Police Magistrates, and the High Court acting as a Court of Session. The Police Magistrates might be expressly empowered to hear the cases which they now hear, according to the procedure laid down in chapter XVIII on summary trials. In appealable cases, the limit of appeal being fixed somewhat higher than in the Mofussil, they might take a note of the substance of the evidence in English, and the appeals might lie, if an additional Police Magistrate were appointed, to a full bench of Magistrates, with power to refer questions to the High Court. If no addition is made to the number of Police Magistrates the appeals might go direct to the High Court, which again would find its sessions business diminished if the Magistrates had the same powers as in the Mofussil. Committals to the High Court might be made as at present. The High Court should be declared to be a Court of Session for the trial of such cases; but it should be provided that the chapter of the Code relating to recording evidence should not apply to the

Judges of the High Court. They should try with a jury of twelve, who should be constituted as at present, and should give a unanimous verdict. The power to reserve cases for the full Court should be maintained as at present. In other respects, the Code of Criminal Procedure might apply. The difference between the Code and the present practice is small. The power of questioning the accused is the principal point of difference, so far I as know, and that is, I think, an undeniable improvement. Several experimental provisions, which in practice have been dead-letters, might, I think, be repealed. They will be found in Act XXIV of 1866, which was intended to set on foot a system of circuits. No High Court Judge ever has gone in circuit in the Mofussil, at least in Bengal, and I do not myself see what good he would do if he did. There are some provisions relating to the Chief Court of the Panjáb to which similar observations apply.

"These are the remarks which occur to me upon this measure; but I cannot conclude without publicly expressing my thanks and the thanks of the Committee to my friends, Mr. Cunningham, the Secretary, and Captain Newbery, who was put upon special duty to assist us in the preparation of the Bill. It is difficult to exaggerate the minute and anxious labour which they have bestowed upon the Bill, and I wish to add that Captain Newbery put at the disposal of the Committee a complete collection of rulings which he had compiled with a view to a new edition of the present Code. I hope that he has been, to a considerable degree, successful in destroying the value of his own work, or rather, in putting it into a shape in which its value will be permanent and general."

His Honour THE LIEUTENANT-GOVERNOR said that the subject of this Bill had been treated so fully, and the principles upon which the Committee had deliberated and discussed the measure had been so clearly explained by the Hon'ble Member in charge of the Bill, that it would not be necessary for him to say much upon the subject. But inasmuch as he had taken a part in the deliberations of the Committee, he should not allow this important measure to pass wholly in silence. The criminal law was, as the Hon'ble Member had said, a law of overwhelming importance in this country; he meant not only the law for the administration of criminal justice, but the executive administration as carried on through the Magistrates. The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government, and the functions of juries of the people having been for many centuries principally directed to the protection of the interests of the people. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed that liberty which was the birth-right of an Englishman; and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so, HIS HONOUR thought they might fairly get rid of some of the rules the object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed to him that they were not bound to protect the criminal according to any code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. That being so, he would say that he had no sympathy whatever for some of those things which his hon'ble friend Mr Stephen had called superstitions. For instance, HIS HONOUR did not see why they should

not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross-question him, and adopt every other means, short of absolute torture, to get at the truth. They had already done a good deal in the direction of clearing away English prejudices, and the Committee proposed to make further concessions to common sense in the present Bill. His Honour thought it right to say that, in his opinion, the Code of Criminal Procedure as now existing was an admirable Code; he thought that the country was under great obligations to the framers of that Code; he had long administered that Code, and thought that it was one of the best Codes of Criminal Procedure that had ever been enacted. On the other hand, he had no doubt that the framers of that Code would be the first to admit that, after ten or twelve years, the time had arrived when the Council might fairly reconsider its provisions; and the action of the Committee upon this Bill had amounted to this, that they had re-arranged and reconsidered and amended its provisions; but no more: the Bill was simply an emendation of the existing Code, which they acknowledged to be a very valuable piece of legislation.

Then, as to the details of the Bill, some people might think that some of the amendments adopted by the Committee were not of such a nature as to be interesting to the general public; but they were of very great importance nevertheless. Some of the amendments were in the direction of securing the efficiency of the executive. The administration of the criminal law was entrusted to the executive officers of the Government, and if they were overburthened by a cumbrous procedure, they would have no time to attend to their multifarious duties. The tendency hitherto had been to overburthen these executive officers with too heavy a record of judicial work. The result had been, to some extent, to tie our officers to their desks, so that they had not been able to perform their executive duties as efficiently as they should. A great deal, then, that had been done by the Committee, had been done to lighten the labour of the Magistrates. He thought that the course of justice usually was this, that first, in early times, there was very little law; that, in the next stage, there was an excess of law and of writing; that it had been so in India there was no doubt. Then, as our Magistrates and Judges became more efficient, we could, to some extent, relax the rules of written procedure and record, and lighten the labours of the Magistrate. That appeared to be the course which the Committee took in the revision of the Code. You must, to a certain extent, place confidence in your officers. His Honour's wish had been, to some extent, to go further; but the Committee had proposed to go a long way in that direction. They proposed that a very large class of petty cases should be recorded in a more summary manner than the way in which they were now recorded, and they hoped that in this way they might hit that happy medium in which there should be a record sufficient for the purposes of justice, but not so long as to overburthen our officers in keeping it. He hoped that, when the next revision of the Code might take place, the labours of the Magistrates might be still further lightened.

His Honour would only make one or two further observations with regard to certain points noticed by the Hon'ble Member in charge of the Bill. The first of those subjects was the subject of the appointment of public prosecutors. His Honour would express his entire and absolute concurrence with his hon'ble friend in the opinion that the prosecution of a criminal in any serious case should not be looked upon in any degree as a suit between man and man, but should be treated as a public matter, and that whether there should be a prosecution or no prosecution, should be a subject for the consideration of a public servant appointed for the purpose. His Honour's opinion was, that the provisions on this subject which were introduced in the Bill were very beneficial, and he hoped the Council would pass them.

Another subject to which he would draw the attention of the Council was the difficult subject of juries. It was His Honour's opinion that, in

this country, juries framed on an English model were not altogether beneficial instruments in the administration of criminal justice; at the same time he had not been willing to abandon the jury system altogether, because, although he did not think that trial by jury was an unmixed good, he believed that the system had a great effect in the political education of the people. It was a very great object to induce the Natives of the country to take a part in self-government and in the administration of justice, and it was in that respect only that he regarded the maintenance of the jury system in criminal trials to be of some value. At the same time, he felt that the jury system was less fitted for criminal trials than to some trials of a civil nature: he should be glad to dispense with the jury system in criminal trials, if there could be introduced something in the shape of trial by jury in civil cases. The Courts at present laboured under great difficulties in the determination of civil cases: it was in many cases a most difficult matter for them to arrive at the truth. He looked upon a panchâyat somewhat in the light of a jury without the superstitious number of twelve; and he hoped that, if they dispensed with juries in criminal trials, they should be able to introduce something like the jury system in regard to civil cases.

The Hon'ble Member in charge of the Bill had expressed a scintilla of doubt with regard to the propriety of permitting a Court of appeal to enhance the punishment awarded to a criminal. It seemed to HIS HONOUR that, after all the eminent services which his hon'ble friend had rendered in the improvement of the administration of justice in this country, the doubt to which he had given expression showed as it were the slightest possible taint of the English-lawyer prejudice still hanging about him, although he was generally so free from anything of that kind. It appeared to HIS HONOUR that, where we afforded the greatest facilities for an appeal to the superior tribunals, the superior tribunal to whom the criminal appealed should have the power to decide what was the proper punishment for the offence; and if that tribunal considered that the punishment that had been awarded was inadequate, it should be in its power to award an enhanced punishment. More than that, it appeared to him that there was a practical necessity for such a provision. Our law as to criminal appeals was the most liberal law in the world: there was no law that was so liberal as to allow a person to say to his jailor, "I wish to appeal," and the jailor was bound to send the appeal on to the Judge without expense or trouble to the appellant. The result of such a law was that the prisoner could lose nothing by his appeal, and might possibly gain something, and the consequence of such a state of things was that, in some districts, there was no such thing as a case that had not been appealed. HIS HONOUR said that that was carrying matters to an undesirable extreme, and he thought that it was only fair that, if a man chose to appeal, he should run the risk of his sentence being enhanced by the Appellate Court if it was inadequate.

The Hon'ble Member in charge of the Bill went at very considerable length into the subject of chapter XI of the Code, which provided for the dispersion of unlawful assemblies, and attributed to those provisions, perhaps, somewhat greater importance than HIS HONOUR would attribute to them. Happily, unlawful assemblies requiring military force for their dispersion in this country were of extremely rare occurrence. HIS HONOUR'S experience was that organized resistance to authority was almost unknown: it had never happened to him that he had been obliged to resort to the assistance of the military to disperse an assembly, and except in the case of actual war and mutiny, he had never been personally concerned in any case in which the military had acted in suppressing any riot or disturbance whatever. At the same time, he admitted that it was not impossible that such cases might occur, and it would be well to be forearmed, and he believed that the law upon the subject had been laid down as well as it was possible to lay it down.

Then, there was another subject incidental to this Code upon which the Hon'ble Member had dwelt at some length, namely, the question of law

reporting. His Honour entirely agreed with Mr. Stephen as to the great evil of the present system of reporting; at the same time, he was not prepared to admit that that fact gave ground for the observations of his hon'ble friend on the subject of lawyers. The observations upon that subject, which had fallen from His Honour on previous occasions, had reference, not to the Judges, but to the greed of the law practitioners, who had made a bad use of the judgments that had been printed in the reports. Every judgment was a sort of carcase, around which the vultures gathered together to extract from it legal quibbles. He believed that very great injustice had been done to the High Courts owing to the system of misreporting to which the Hon'ble Member had alluded; people had been supplied with bad abstracts of bad reports, and the result had been a perversion of the judgments of the High Courts, attributing to them errors and absurdities of which they had never been guilty.

Perhaps, he need not follow the Hon'ble Member in the remarks he had made in regard to the draft of a Bill which His Honour hoped he would leave to the Council for the extension of a system of Criminal Procedure to the presidency towns. His Honour had already expressed his opinion upon that subject; and he had only to say that we should be immensely indebted to the hon'ble gentleman if he put the matter into train for legislation. He need only further say that, in respect to many Bills, India would always owe to the Hon'ble Member an enormous debt of gratitude, and that he believed that Hon'ble Members would agree with him in fully expressing that gratitude.

The Hon'ble Member's motion included the consideration of the supplementary report on the Bill. It was true that that supplementary report had been put in at a very late period, and that a very long time had not been allowed to elapse for the consideration of it. But it might be some comfort to some Hon'ble Members who had not had the full opportunity which His Honour had of considering the amendments which accompanied the supplementary report, to know that he had criticized those amendments with great care and some jealousy, and although he was not prepared to say that the whole of those amendments were absolutely necessary, he believed by far the greater number of them to be unobjectionable, and some extremely necessary. The greater part of them were of a verbal nature and not very important; and he hoped the Council would accept the report of the Committee with the addition of one or two small amendments which he proposed to submit for consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Stephen also moved that the amendments mentioned in the supplementary report be adopted.

The Motion was put and agreed to.

The Hon'ble Mr. Ellis said that there were three amendments in his name on the notice paper. But the second of those amendments was not connected with the other two in any way: he would not therefore refer to that amendment at present. He proposed at present to ask the Council to consider the first and third amendments, which were substantially the same in purport and effect. As a preliminary, he begged leave to express his sense of the great ability with which the hon'ble member in charge of the Bill, and the Select Committee, had dealt with the subject, and his appreciation of the very great labour they had bestowed on it. He thought that the thanks of the Council were due to them in a special degree for the very provisions in respect of which he had to move these two amendments. With the hon'ble member in charge of the Bill, he was exceedingly glad to notice the excellent spirit in which these new provisions with regard to the jurisdiction over European British subjects had been received by the public generally—a spirit which was very different from that in which some similar propositions had been received a few years ago. The matter seemed to have been looked upon at the present time very properly as a simple question of administration. The difficulty attending the conviction in the Mofussil of offenders being European British

subjects, was admitted to be a great evil, and the question was how to remove the evil, without risk of injustice being done to those concerned. The provisions which had been devised by the Committee for solving the problem how to deal with such cases were not in the main objected to by MR. ELLIS: on the contrary, he thought, the Committee had shown much wisdom in framing the sections in the manner in which they had been drawn. He did not hold with those who conceived that it was necessary to deal with Europeans and Natives in precisely the same manner. There were to his mind administrative reasons that would justify a difference; but he did not believe that it was necessary to deal with the question on the broad basis on which the hon'ble member in charge of the Bill had dealt with it. It appeared to him that there were abundant reasons why we should not trust Native Tahsíldárs and Deputy Collectors to deal with the class of European offenders. They were often ignorant of the language and always ignorant of the feelings and customs of the Europeans, and he thought therefore that it would be very imprudent to give them any power to deal with Europeans of the class with which they would be brought into contact. That being so, he cordially endorsed the main principle of the sections drafted by the Committee; and he considered that the Committee had done rightly in limiting the cognizance of such cases to Justices of the Peace and high officers in the position of Sessions Judges. But, then, he thought that the Committee had made an invidious distinction, which was not called for and which he desired to see removed. Admitting that the officers who should take cognizance of offences by Europeans should not be of a lower standing than Justices of the Peace and Sessions Judges, he saw no reason why Natives who were qualified to be appointed Justices of the Peace should not have cognizance of these cases in common with their European compeers. The only object of making a person a Justice of the Peace was to enable him to deal with European British subjects: the appointment had no other significance whatever. And if it was admitted that a Native could, under any circumstances, be appointed a Justice of the Peace, it must be admitted that he would then be qualified to deal with offences committed by European British subjects. The point then for the consideration of the Council was, who could be appointed a Justice of the Peace? Setting aside the case of the presidency towns, which was alien to the subject under consideration, the only persons who could be appointed Justices of the Peace were European British subjects and Covenanted Civil Servants. It was as a Covenanted Civil Servant, and in that capacity alone, that a Native could take cognizance of these cases as a Justice of the Peace. MR. ELLIS might be allowed to paraphrase the words of his hon'ble colleague, Mr. Stephen, in discussing the Bráhmo Marriage Bill, and address the Native Civil Servant in these words—"We have instituted schools and universities for your benefit; we have taught you the arts and sciences; we have thrown open the services to you by which you can obtain a high position in the land. We have not only done that, but we have urged your going to England to make yourselves acquainted with our institutions and people, and to learn their usages and manners. We have done all this, and when you return, having by your ability attained to the dignity of a member of the Covenanted Civil Service, we tell you that you are not fit to deal with a European British subject and to sentence him to one week's imprisonment." MR. ELLIS thought that all this was inconsistent and anomalous. When you admitted Natives to be Justices of the Peace, you ought not to place any bar to the powers which they might exercise in common with other Justices of the Peace. But it might be urged that, in the position of a Sessions Judge, any Native would be empowered by the proposed amendment to exercise jurisdiction over European British subjects. In answer to this, he would say that, if a Native be appointed to this office, he must be appointed exceptionally, showing that he was by his judicial knowledge and other qualifications competent to exercise jurisdiction equal to that of the Covenanted Civilians with whom he would be associated. MR. ELLIS would say therefore that, in making

the invidious distinction which was now proposed, if we excluded any Justice of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated Native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant, among which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II of 1869, certain Natives might be appointed Justices of the Peace, and on what ground, he would ask, was it proposed to restrict their powers as Justices of the Peace? The only argument that he had heard adduced was that we were conferring new powers on Justices of the Peace, and not taking away old powers, and that this being a compromise, the Committee were pledged to act as they had proposed in their preliminary report, and that we ought not to disturb that promise. In answer to that, he would assert that we were not merely conferring new privileges. By Act II of 1869, Justices of the Peace (and Natives might attain that position) had the privilege of dealing with Europeans in certain cases: for instance, they could fine to a certain amount; they could commit for trial to the High Courts, and exercise all other powers of a Justice of the Peace. These powers, though conferred so recently as 1869, would be taken away by the present Bill. But the second objection was perhaps a more important one, and in regard to that, he might say, in the first place, that he did not see that any pledge had been given, or, if given, that it was only given to an extent which was quite compatible with the amendment which he now proposed. He was not aware to whom that pledge was supposed to be given: he presumed that it was not to the Native public, though they were deeply concerned in the proper administration of justice on wrong-doers. Was it, then, the European public to whom the pledge was given? He could not consider that the European public outside these walls, consisting of Government officials, of merchants, traders, planters, and the like, were in any way more interested in the matter, than the Members of this Council themselves were. They all had the good of the country at heart and desired that some steps should be taken to remedy the present inconvenient state of things with respect to Europeans in the Mofussil, and that the remedy should be as effectual as it could be, consistently with security against injustice. The only persons, therefore, to whom any pledge could possibly be held to have been given, was the class of persons most interested—he meant the class of Europeans who by misfortune had fallen into crime; and with regard to them, he objected wholly to its being supposed that these new sections which the Committee had devised tended only to their prejudice, detriment, and hurt. In one respect, these sections might be supposed to act to their detriment; for, under the present system, the criminal frequently escaped conviction; but that was nothing to the boon which was conferred upon the European criminal by these sections, by giving him the opportunity of having speedy justice administered, and the chance of a very much lighter punishment than he might otherwise have obtained. MR. ELLIS would mention one instance which had occurred in the Bombay Presidency. A European stole a common blanket worth two rupees: he was committed to the High Court for trial; but as the Sessions had only just concluded, he was kept in confinement for upwards of two months awaiting trial. When he was tried and convicted, the Judge discharged the prisoner because he had suffered more punishment than should have been awarded to him for his offence. The poor man had been in jail for upwards of two months; but even if a Native Civil Servant were acting as a Justice of the Peace, the amount of punishment that would have been awarded under the proposed amended sytem, would have been one week's imprisonment at the outside. Therefore MR. ELLIS said that the provisions which had been devised by the Commitee were a boon to the criminal; for while he would have speedy justice with the chance of three months' imprisonment, he might otherwise have been sent up to the High Court and got a year's imprisonment. Thus, the provisions that had been proposed should be adopted in the interests of

the European himself. But all the boons promised to the criminal by the preliminary Report had not been given by the Bill as drawn; the first recommendations of the Committee having been materially altered. The first recommendations held out a hope to the criminal that, by confessing his crime and not objecting to the jurisdiction, he would get off with a less amount of punishment. That provision had been omitted. Thus, the recommendations in the preliminary Report had not been adhered to. But, on the other hand, the formal Resolution in that Report had been adhered to; and to this Resolution his proposed amendment was in no way opposed. In fact, he fully concurred in it and wished to carry it out precisely as framed by the Committee. The Resolution was worded thus:—

"We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might, with advantage, be extended in the case of European British subjects."

There was not a word in this restricting the power to European Justices, and why the Committee should consider themselves pledged to subsidiary recommendations which they themselves had altered, he could not understand. Moreover, great stress had been laid upon the circumstance that the compromise had been assented to by the public, and that the provisions as sketched out in the preliminary Report had met with general approval, the evidence of this being the little opposition offered by the Press. But MR. ELLIS claimed for his amendment precisely the same admission; he would claim for it general acceptance; for in the Bill as originally drafted, there was no such limitation that a Justice of the Peace should be a European British subject. In section 44 it was provided:—

"Any Justice of the Peace may, and no other person shall, commit, or hold to bail, any European British subject to take his trial before a High Court."

Section 47 also enacted:—

"Every person exercising the full powers of a Magistrate, and being also a Justice of the Peace, shall have power to enquire into and determine in a summary way complaints of offences committed by a European British subject outside the local limits of the ordinary original criminal jurisdiction of the High Courts, and on which a summons ordinarily issues in the first instance, and, in case of conviction, to inflict on the offender a fine not exceeding five hundred rupees, and, in default of payment, imprisonment for a term not exceeding two months, in some place of confinement within the District, which, in the opinion of the Magistrate, is fit for receiving such offender, or, if there be no such place, then in the presidency gaol."

Now, to these sections no more opposition had been offered than to the subsequent report of the Committee, and therefore he might say with safety, that if it was asserted that no objection had been taken to the Bill in the form in which it had been presented by the Committee, his proposition had also been accepted by the public, and no ground of pledge or compromise could be urged against the amendment which he proposed. He would therefore move—

(1.) That the first paragraph of section 72 be omitted.

That, instead of the second paragraph of the same section, the following be substituted:—

"No Magistrate shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is a Magistrate of the first class and a Justice of the Peace."

(3.) That section 77 be omitted, and that the second paragraph of the present section 76 be numbered 77.

The Hon'ble MR. CHAPMAN agreed with very much that had fallen from his hon'ble friend, but he felt himself unable to support the amendment, for the very plain and conclusive reason, that he, as a member of the Select Committee, considered himself bound to adhere to the pledge he had given the European community, that under the altered law an Englishman should retain his privilege of being tried by an Englishman. It must be remembered that the Bill before the Council would deprive our countrymen of privileges which they had hitherto exclusively enjoyed, and on which they set the highest value,

and at great sacrifice, had gone to England and had devoted themselves to the attainment of those qualifications which had enabled them to pass a severe competitive examination for admission to the Civil Service. He thought it would be a grievous discouragement to say to them—"You are not competent to administer justice to European British subjects." He thought that by the restriction we in effect said to the European—"You are not to be tried in the Mofussil by the agency by which you are tried in the High Courts and in the Courts of the Magistrates in the presidency towns, with the general approval and sanction of the European and Native communities." It was saying in effect that the Native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the presidency towns to try him. There appeared to His Excellency to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the presidency towns and the Mofussil. There were now a great number of public spirited men and a great deal of public spirit all over the Provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the presidency towns and the Mofussil. There was not that distinction of light and darkness which existed formerly; there was now almost equal light in the Mofussil and in the presidency towns. His Excellency did not himself consider that there was the slightest possibility that in the rare case of a Civil and Sessions Judge trying a European British subject in the Mofussil there would be an abuse of justice. It had been said that if this distinction was obliterated it would be offensive or hurtful to our European fellow subjects. He thought that there might be some dissatisfaction, but he did not think that the irritation or dissatisfaction would be of a sustained character. He believed that the actual cases in which the penalty of imprisonment would be awarded would be extremely rare: there would not be a frequency of those cases which were likely to cause dissatisfaction. On the other hand, His Excellency had the greatest confidence in the justice and generosity of his countrymen. He thought that the generosity which they had extended to the exercise of judicial functions by Natives in the presidency towns, would very soon be extended to the exercise of justice by Natives in the Mofussil, and that there would be no permanent dissatisfaction or irritation or grievance caused by the obliteration of the distinction which now existed. His Excellency's very hearty concurrence would therefore be given to the hon'ble Mr. Ellis' amendment.

The Hon'ble Mr. Ellis said that after the observations which had fallen from His Excellency the President in favour of the amendment, he hardly required to say anything further upon the subject. But he desired, with reference to what had fallen from his hon'ble friend, General Norman, to add his testimony to the efficiency with which Native Magistrates had performed their duties in the presidency towns, in the administration of justice to both Europeans and Natives; and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And if they had done that, he saw no reason why Natives in the position of Covenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the Mofussil. His hon'ble friend, Mr. Stephen, had remarked that, in this matter, we were not to consult the feelings of the Judge, but of those who were to be subjected to the jurisdiction; in answer to that, Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of Europeans in the presidency towns, should hurt them in the Mofussil.

His Honour THE LIEUTENANT-GOVERNOR said that, as his hon'ble friend Mr. Ellis had put it, the first Report of the Committee had placed before the public certain matter for consideration. Under all the circumstances, he should not have thought himself justified in now making any radical alteration in the propositions put forward by the Committee. But it appeared to HIS HONOUR that what was now proposed was a minimum of change. It was not proposed to impose upon the European public the general liability to be tried by Native Magistrates, but only the possibility of being placed under the jurisdiction of three or four Natives who had qualified themselves for admission into the ranks of the Covenanted Civil Service, and who, under the existing law, might be Justices of the Peace. After consideration, and having listened to the arguments and given due weight to the weighty considerations which His Excellency the President had placed before the Council, HIS HONOUR was prepared to vote in favour of the very limited change which was proposed by the amendment.

The Hon'ble SIR RICHARD TEMPLE said that the reason why he had not expressed any opinion at an earlier stage of this debate was this, that he felt that this question did slightly involve that larger and graver question as to whether civil appointments of the higher classes should be thrown open to the Natives. But that had already been decided by the supreme authority of Parliament. That having been decided, he thought that the inference was undeniable that, if the Natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the Mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance. After what had fallen from hon'ble members, he felt that he ought not to give a silent vote on this subject. He would vote in favour of the amendment of his hon'ble colleague Mr. Ellis.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Strachey.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Stephen.
His Excellency the Commander-in-Chief.	Major General the Hon'ble H. W. Norman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Inglis.
Hon'ble Mr. Ellis.	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.

So the amendment was negatived.

The Hon'ble MR. ELLIS then moved—

That in section 76, instead of the words "but not Assistant Sessions Judges," the following be substituted :—

"and, when specially empowered in that behalf by Government, Assistant Sessions Judges, who have been Assistant Sessions Judges for not less than three years."

In doing so, he said that there were Sessions Judges who had been Sessions Judges for a day only, and there were Assistant Sessions Judges who had held their office for many years. These Assistant Judges exercised very many of the functions of District Judges. Moreover, in the scheme framed for the judicial administration of the Panjáb, it was proposed to place whole Districts in charge of Assistant Judges; but under the wording of this Bill, those Assistant Judges would not be able to take cognizance of cases against European British subjects; therefore in one-half of the Districts of the Panjáb there would be no judicial officer empowered to try such cases. The matter was a simple one of administration, not involving any new principle, and he would not therefore dilate on it.

The Hon'ble MR. CHAPMAN said he quite concurred in what had fallen from his hon'ble friend Mr. Ellis. He believed that the proposal now made would be a very valuable addition to the Bill.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved—

"That the second paragraph of section 74 be omitted.

That section 79 be omitted."

He said that he felt under a great disadvantage in moving the amendments of which he had given notice, because a large majority of the Council were Members of the Select Committee and were pledged to the Report—the whole Report, and nothing but the Report of the Committee. Therefore the amendment which he now proposed could only be regarded as his protest against an extension of the powers of Magistrates for dealing with European British subjects.

HIS EXCELLENCY objected to the increased powers proposed to be given by section 74 to Magistrates for the punishment of European British subjects. He considered the Magistrates had at present quite as wide powers as it was necessary to give them. He was not aware of any reason why European British subjects required more repression than heretofore.

He could not but think that the complete silence with which the public had received the intimation of the increased powers which it was proposed to give to Magistrates, was owing to the supposition that they were intended only for the suppression of the loafer, the troublesome and irrepressible European vagrant. But as his honourable friend, Mr. Chapman, had remarked, it was not only the loafer, but persons of the highest respectability who might be subject to this jurisdiction.

If it was the loafer against whom these powers were directed, he certainly would never be able to pay a large fine; his lot would invariably be imprisonment, which is not likely to render him, in person or character, better able to gain a livelihood than before.

He thought the manner of dealing with loafers should be a different one. HIS EXCELLENCY was of opinion that, as in the case of persons brought from Australia in charge of horses, those who brought out and let loafers loose on the country, should be bound to provide for their deportation and thus prevent their becoming a nuisance to the country.

If the person against whom the increased Magisterial powers are directed is the European settler, planter, or merchant, he would ask what have they been doing lately to require greater severity of treatment?

His hon'ble colleague, Mr. Ellis, had rather dilated on the delight which the European should feel at being promptly put into jail for three months; but an imprisonment for three months in the hot weather was a very serious punishment.

It might be the case of a poor man unable to make a proper representation of his case, or he might be ignorant of his right of appeal.

In by far the greater number of Magistrates' jurisdictions, there are no places in which an European could be imprisoned, without injury to his health, in the hot weather in India. HIS EXCELLENCY would ask whether the Government were prepared to supply every Magistrate with a prison suitable for the confinement of European offenders during the hot weather; or whether the prisoner, when sentenced, is to be sent to the place of confinement for prisoners sentenced by the higher Courts? If so, HIS EXCELLENCY thought it would be better if the prisoner were to be sent at once to the higher Court to be tried there.

He said he was jealous of the liberty of the European British subject in India, because he laboured under great disadvantages. In places where

Europeans are numerous, there is a chance that there may be European witnesses, but in remote places there is every probability that he may be at the mercy of Native witnesses.

His Excellency objected to trust the fate of the European offender to the single judgment of the one Magistrate. He had no objection whatever to the Sessions Judge, as he is an officer of wider experience, and he has a jury or assessors to assist his decisions; but a Magistrate who has resided for some time in remote districts, is very apt to adopt peculiar notions which might affect his decisions.

His Excellency could mention a case which came under his own knowledge.

A full-power Magistrate, whom he would, for the sake of convenience, call Mr. Full-power Magistrate Robinson, and who was not in any way connected with his hon'ble colleague, reviewed the case of a soldier who was pursuing some life-convicts who were effecting their escape. In the dark night he overtook them, having outstripped his comrades, and they, seeing but one man, mobbed and tried to disarm him: being obliged to use his weapons, he bayoneted his most troublesome assailant, giving him three stabs. Mr. Full-power Magistrate Robinson wrote a severe report on the soldier's proceedings, because he gave three stabs when, in the opinion of the Magistrate, one would have been sufficient. His Excellency was convinced from the Magistrate's report that he was a good and humane young man, but His Excellency much feared that he would have punished the soldier, had he had the power, very severely.

In another case, a Magistrate in a secluded district acquired a dislike, almost amounting to hatred of Europeans, and would not let one come near him or enter his presence. His Excellency with another officer (now living), was refused admittance to him, although they called on public business. His Excellency could not help fearing that, if that gentleman had had to sentence an European, the sentence would have been a hard one.

In another case, a Magistrate was personally concerned and endeavoured to bring the case on for trial in the Courts of his own station, presided over by his brother Magistrate, where local feelings were naturally in a state of irritation.

His Excellency had mentioned these instances to show that it was not expedient to entrust a Magistrate with these extended powers, considering the extreme severity of the punishment of imprisonment to Europeans in this country.

His Excellency thought it might be assumed that Military Law was severe enough. But the Commanding Officer of a Regiment, who seldom attained that position under twenty years' service, and often not until a much longer period, and is an officer of long administrative experience, could only sentence a soldier to imprisonment for twenty-eight days.

A Regimental Court Martial, consisting usually of five, and never less than three officers, could only sentence to forty-two days' imprisonment. His Excellency therefore did not see why a Magistrate of only a few years' service should have power to inflict a sentence of imprisonment for so long a period as three months, on his own unaided judgment.

In making these remarks, he desired to guard himself against being thought to underrate the value of the Civil Service to which the Magistrates belong.

His experience during many years' service had enabled him to verify the high opinion expressed by his hon'ble colleague, Mr Stephen, of the Civil Service, which His Excellency had been associated with under circumstances that had enabled him to appreciate their high honour and rectitude, and their devotion to their duties. His Excellency had the highest respect and regard for the Civil Service of India, and he believed that it was unsurpassed by any similar body in the world. His Excellency trusted that he should not be

misunderstood, because he objected to an extension of power which might fall into the hands of young Magistrates, who were placed under circumstances not tending to develope a mature judgment.

The Hon'ble MR. STEWART said that he was one of the Committee which drafted the Resolutions upon which these provisions had been based, and he took very much the same view of the subject as the Hon'ble Member in charge of the Bill. He thought that, practically, they were bound by the recommendations of the Committee in their preliminary report.

The Hon'ble MR. CHAPMAN said that the papers before the Council were exceedingly voluminous, and His Excellency the Commander-in-Chief had not perhaps read the whole of them. The testimony which they bore upon the subject under discussion was quite concurrent from all quarters that the evil must be dealt with, and the Committee had stopped far short of the recommendation of the local authorities. He thought that if His Excellency would duly consider the inconvenience and expense of sending down a host of witnesses in every trivial case of theft, he would admit that it was a great hardship upon them.

With reference to His Excellency's remarks as to there being no suitable places for the confinement of Europeans, if he referred to the Bill he would find that it was provided that sentences of imprisonment of Europeans were only to be carried out in places which the Local Government considered fit for the purpose. A Magistrate had the power of sentencing a native to imprisonment for two years, to order him to be flogged, and to fine him. Surely, the same man was competent to deal with the case of a European British subject, and sentence him to three months' imprisonment? MR. CHAPMAN thought that the class of men who would be entrusted with these powers were fully qualified to exercise them: he thought that they were quite as qualified to sentence a European to imprisonment for three months, as the Sessions Judge was to inflict a much severer punishment; and it very frequently happened that the Magistrate of the District was a man of quite as much experience, if not greater experience, than the Sessions Judge.

His Honour THE LIEUTENANT-GOVERNOR said that he would only notice two points in connection with the remarks of His Excellency the Commander-in-Chief. His Excellency asked whether planters and merchants in the Mofussil were a worse or better class of men now than they used to be. HIS HONOUR would answer most decidedly that he admitted that they were a better class of men than they were formerly. It must, however, be remembered that since the year 1853 the Government were under a Statutory obligation imposed by the British Parliament to improve the administration of justice in the country, and they were now fulfilling that obligation. And as regards planters and merchants in the country, although they were not a worse class of men, but on the contrary a more loyal and much better class of men, yet they were now a much more numerous class: the loafer also was a much more numerous class, and it was necessary for the peace of the country that he should be made amenable to the law.

On the other point, as regards the provision of suitable accommodation for the confinement of Europeans, HIS HONOUR hoped and believed that there were very few places in which suitable places had not already been provided for the purpose by the erection of Central Jails all over the country. Besides, as his hon'ble friend, Mr. Chapman, had observed, under the provisions of the Bill, sentences of imprisonment imposed upon Europeans could only be carried out at places appointed by the Government for the purpose; and the Government would be bound not to permit the imprisonment of a European in a place which was not suitable for the purpose: European prisoners would be sent to a place where there was good accommodation. It was well known that the greatest difficulty and inconvenience had been found in the prosecution of European British subjects charged with offences, in conse-

quence of its being necessary to bring down to the High Court all the witnesses in the case. But under the provisions now under consideration, the prisoner having been sentenced to imprisonment, the grievance to him to be sent to the place of confinement would not be a very great one, and his deportation would not be attended with very great offence to the State, now that there were increased facilities for travelling by rail and steamer.

The Hon'ble MR. ELLIS said the observations which he desired to make had in a great measure been anticipated by the remarks which had fallen from His Honour the Lieutenant-Governor and his hon'ble friend, Mr. Chapman. But he did not wish to give a silent vote upon this question. He grieved to say that he was unable to concur in the arguments which had been adduced by His Excellency the Commander-in-Chief; in fact, His Excellency would perhaps already be prepared for the announcement MR. ELLIS had made. He could not look upon this chapter of the Code altogether in the light of an injury to the criminal. He thought that under these provisions the European would enjoy more liberty than he did at present, there being so many cases in which he would enjoy speedy justice and be dealt with lightly with the view of saving the witnesses from long and harassing journies; and on the whole he thought that the criminal would not be worse off under the proposed than under the existing system. He could not view the regulations which the Council were making at all in the light that they would affect planters and such classes of Europeans in a prominent degree, or that they were likely to be concerned in a large number of cases of the description contemplated. He considered such classes of Europeans as far above such considerations. It was with the loafer, and the unfortunate people who from want of proper means of subsistence had been driven to crime, that we had to deal. And as means of punishment were provided, by the existence of that very means of punishment we should prevent a great deal of crime being committed by that class of men. The knowledge that punishment would swiftly follow crime was the best deterrent of crime.

With reference to His Excellency the Commander-in-Chief's remark as to the amount of imprisonment that could be awarded by the Commanding Officer of a regiment, MR. ELLIS would observe, that there was this difference between the powers that might be entrusted to a Military Officer and the powers that were exercised by a Magistrate, that a Commanding Officer's business was to be martial, not judicial-minded. It was a Magistrate's business, on the other hand, to be judicial-minded; he was accustomed to administer justice, and in that particular respect he might be considered to be far better qualified than the Commanding Officer of a regiment. On those grounds MR. ELLIS regretted that he was unable to concur in the amendment of His Excellency the Commander-in-Chief.

The Hon'ble SIR RICHARD TEMPLE said that, although he was unwilling to trouble the Council with any remarks upon this subject, yet as a member of the Government he felt bound to add his testimony, and to say that from his experience of very many parts of the country, it appeared to him there was great necessity for those provisions of the Bill which empowered Magistrates to try Europeans for petty offences. He believed that those provisions arose out of the necessities of the age, and the progress which we had made in the development of the resources of the country, considering that the expansion of Railways all over the country and the immense increase of industrial enterprise had caused the influx of a large number of our countrymen: without any disparagement to them as a body, it must be admitted that some of them occasionally fell into trouble and into evil ways. That was a fact which there was no shutting their eyes to. The increase of Europeans of what might be called the working classes had been very great: it was one of the necessary circumstances concomitant with some of the greatest improvements of the age. If unhappily individuals of European classes, then, committed offences, the Council had to consider not only the offenders themselves, but also the persons with whom they

might come into contact. He did not believe that the offenders themselves would be placed in any worse position by the enactment of these provisions, than that in which they would otherwise be. He admitted that sometimes a Magistrate might be hasty in respect to affairs of this nature, but still he was confident that through the great progress of public opinion in the country, that opinion would be brought to bear upon them, and that there was little or no danger of Magistrates' abusing or misusing the powers entrusted to them. At the same time, the Council were bound to remember that, under the present state of the law on the subject, a great many who committed crimes escaped punishment, and a great many innocent persons suffered in consequence. We must not only think of the criminal, but we must think of the unhappy circumstances of those who came into contact with those criminals. They were persons who had at least as much claim upon our sympathy as any other class, and they would receive considerable relief by these new provisions.

On those grounds he felt it his duty, not only to vote for the provisions contained in the Bill, but also to take the first opportunity of expressing his views upon the subject.

His Excellency THE COMMANDER-IN-CHIEF observed that his hon'ble friend, Mr. Chapman, had spoken of the experience of Magistrates; but HIS EXCELLENCY was informed that Magistrates of only two or three years might be invested with the full powers of a Magistrate and Justice of the Peace on passing the necessary examinations.

With reference to the remarks of his hon'ble friend, Mr. Ellis, that these provisions were directed against the lower orders of the European population, HIS EXCELLENCY would observe that a fine of rupees one thousand was not a punishment which might be said to be directed against a poor man, but rather against the higher classes of Europeans.

HIS EXCELLENCY THE PRESIDENT regretted that he was not able to support the amendment of His Excellency the Commander-in-Chief; his inability to do so was not from any want of sympathy or consideration for the class of persons in whose behalf the Council were desired to interfere, but from a sincere conviction of the necessity of some provisions such as those which were contained in the Bill. A great deal had been said about the loafer, and a bad name had been given to a class of Europeans who did not always deserve the stigma that had been cast upon them. It was in Madras that an attempt was first made to afford some place of refuge to an injured class of our countrymen in this country, and then the discovery was made what the real condition of these unfortunate people was. When first, wha was called, the "Loafer's Home" was established in Madras a great deal of laborious attention was paid to it by his hon'ble friend, Mr. Robinson, and THE PRESIDENT thought Mr. Robinson would concur with him when he said that, in the great majority of cases, the members of the humbler orders of our countrymen were more unfortunate than guilty. Mr. Robinson discovered a great number of valuable elements in the character of these men, who found it impossible in this country to maintain a respectable state in society. THE PRESIDENT did not wish to apply harsh terms to the humbler orders of his countrymen, it must, however, be allowed that there was a class of Europeans now in this country in reference to whom a temperate but speedy means of justice was necessary; and he could not doubt that the class of Magistrates in whom it was proposed to vest these powers were quite competent to inflict the petty sentences which were contemplated by this Code. He agreed with His Excellency the Commander-in-Chief in thinking that there was something inconsistent in reference to the amount of fine which it was proposed by these provisions to authorize the Magistrate to inflict; and if His Excellency had confined his amendment to a reduction in the amount of fine, THE PRESIDENT would have been glad to support the proposition; but if His Excellency was determined to press the whole of his amendment, THE PRESIDENT would feel himself compelled to vote against it.

THE PRESIDENT could not admit the force of the objection which His Excellency the Commander-in-Chief had raised on the ground that there were no proper places for the detention of European prisoners. THE PRESIDENT believed that the institution of Central Jails which were nearly completed over the whole of India, provided proper places for the imprisonment of European British subjects of the humbler orders, and in such places as those in which Central Jails had not yet been provided, it appeared to him that there would be no difficulty in transporting a prisoner to some adjacent prison.

The question being put,

The Council divided—

AYE.	NOES.
His Excellency the Commander-in-Chief.	His Excellency the President. His Honour the Lieutenant-Governor. Hon'ble Mr. Strachey. Hon'ble Sir R. Temple. Hon'ble Mr. Stephen. Hon'ble Mr. Ellis. Major General the Hon'ble H. W. Norman. Hon'ble Mr. Inglis. Hon'ble Mr. Robinson. Hon'ble Mr. Chapman. Hon'ble Mr. Stewart.

So the amendment was negatived.

His Excellency THE COMMANDER-IN-CHIEF moved that, in section 488, last line, instead of the words "Local Government" the words "Government of India, or the Government of Madras or Bombay" be substituted. He said:—

MY LORD,—In the case of such disturbance of the peace as is contemplated in Part XI, Chapters XXVI and XXVII, I consider that it would be a security against possible complications if the sanction of the Government of India, or the Government of Madras or Bombay, were obtained to the prosecution of a Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-two, four hundred and eighty-four and four hundred and eighty-seven, instead of the prosecutions being instituted by the Local Governments. The term 'Local Government' includes the smaller agencies where local authorities are more liable to be influenced by local feelings than the presidential Governments.

"By adopting the amendment which I propose, such an anomaly as the payment by the State, at the same time, of the prosecution and defence of a person prosecuted, would be avoided.

"With telegraph communication everywhere, no possible evil would arise from the delay in seeking the sanction of the Governor General, or Governor in Council, before plunging the Government into a prosecution which it might consider it necessary to defend. I believe that, by adopting my amendment, you will obtain a security against inexpedient prosecutions, and will lose nothing in the efficiency of administration."

His Honour THE LIEUTENANT-GOVERNOR said that it was perhaps not unnatural or out of place that he should wish the power of directing prosecutions under this section to be left in the hands of the Local Government. He should have thought that there was a certain consistency in the amendment if His Excellency had proposed in all cases to require the sanction of the Government of India to these prosecutions. It seemed to HIS HONOUR that such proceedings would be extremely cumbersome. He objected to the power of sanctioning prosecutions being vested in the Governments of Madras and Bombay, and not in the Government of Bengal, and the other Local Govern-

ments. His impression had been that the protection proposed to be given applied specially to soldiers. But as he now understood the provision, it related to Civil as well as Military Officers. As regards Civilians and soldiers equally, he thought the Civil Government should decide the matter; he did not think it ought to be decided by the Military authorities whether a prosecution of an officer or soldier should or should not be permitted. He thought it was not respectful to the other Local Governments to exclude them from the exercise of this discretionary power.

Major-General the Hon'ble H. W. NORMAN entirely supported the amendment. The control of the armies in India was vested in the Government of India and in the Governments of Madras and Bombay, and not in the other Local Governments; and it would be more satisfactory to the members of those Armies not to be sent to trial under the provisions of this Code without the sanction of the Governments under which they served. It was in the power of those Governments to consult with their respective Commanders-in-Chief, an advantage not possessed by other Governments. He would therefore support the amendment.

He desired to take this opportunity to say how much he thought the public were indebted to the Hon'ble Member, Mr. Stephen, for this comprehensive Bill which he had prepared, and for the simplification of the law on several very important subjects. The profession to which Major General H. W. NORMAN belonged were particularly indebted to Mr. Stephen for those provisions of the law which the Council were now discussing. Nothing of the kind existed in the English law, and much embarrassment and hardship had arisen in consequence. But no such embarrassment could in future take place in this country with these clear provisions of the law to guide those concerned. He thought the provisions of section 487 would be most useful, as cases may often arise in India where it is desirable for a Military Officer to act in the absence of any Magistrate: section 488 also, he thought, would be most valuable in protecting officers and troops from vindictive prosecutions.

The Hon'ble MR. ELLIS said that, if the question before the Council had been merely, whether a Magistrate who suppressed a riot with the aid of the troops should be prosecuted under the orders of the Local Government or of the Supreme Government, he should, without hesitation, have said that the matter might safely be left to the discretion of the Local Government of the Province in which the case occurred. But as the Military also were concerned, he thought it would be wise to limit the power of ordering prosecutions to the Government of India and the Governments of Madras and Bombay. He had not the slightest wish to detract from the dignity of the office which His Honour the Lieutenant-Governor held: the difference in this respect between the position of the Governments of Madras and Bombay, and the Government of Bengal, consisted in this that, while those Governments could act with the advice of their respective Commanders-in-Chief, His Honour the Lieutenant-Governor had no Commander-in-Chief to advise him, and could not have those considerations placed before him which it was the duty of a Commander-in-Chief to put forward. He should therefore vote for the amendment of His Excellency the Commander-in-Chief.

The Hon'ble SIR RICHARD TEMPLE concurred with what had fallen from his hon'ble colleague Mr. Ellis. He desired to explain that in his estimation the position as a Civil Government occupied by the several Local Governments under the Lieutenant-Governor was in no wise inferior to that of the Governments of Madras and Bombay: indeed, some of those Local Governments were of the greatest importance. But the question before the Council was not a civil question: it was really a military question. And inasmuch as the Bengal Army was under the control of the Government of India, and not under the Government of Bengal, it appeared to him necessary that the sanction requisite for the prosecution of soldiers under this provision should be under the authority of the Government of India.

The Hon'ble MR. STEPHEN said that he must oppose the amendment. It appeared to him that the object with which this section was inserted in the Code, was to protect soldiers and Magisterial officers from prosecution at the hands of private persons when charges were brought against them. He could hardly imagine that a man who was placed in the important position of a Lieutenant-Governor or a Chief Commissioner, should be considered unfit to exercise the discretion vested in the Local Governments under this section. He thought that the difficulty that would be attendant upon obtaining the sanction of the Government of India to a prosecution, would be tantamount to prohibiting prosecutions altogether. He thought, therefore, that the power to accord this sanction should be given to the Local Governments, and if it were retained in the hands of the Government of India, it would almost have the effect of placing persons engaged in putting down a riot above the law altogether.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	His Honour the Lieutenant-Governor.
His Excellency the Commander-in-Chief.	Hon'ble Mr. Strachey.
Hon'ble Sir R. Temple.	Hon'ble Mr. Stephen.
Hon'ble Mr. Ellis.	Hon'ble Mr. Inglis.
Major General the Hon'ble H. W. Norman.	
Hon'ble Mr. Robinson.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Stewart.	

So the amendment was carried.

The Hon'ble MR. CHAPMAN then moved—

"That the following words be added to section 54 :—

'Every Sessions Judge, Additional Sessions Judge, Joint Sessions Judge, Assistant Sessions Judge, and every Magistrate shall, in his executive capacity, be subordinate to the Local Government.'"

He said the object of the amendment was to make known to all officers discharging judicial functions that, in matters of an administrative or executive character, they were bound to obey the orders of the Government under which they were employed. He thought that no Sessions Judge should have it in his power to question, for example, the right of the Government to nominate him to the duty of sitting on an examination Committee. It was true that in point of practice the Government always had the power to enforce obedience to orders of this kind; but still he thought the opportunity should not be lost of explicitly declaring in this Code the subordination of officers in all matters not affecting their judicial independence.

He did not, on reflection, think his amendment had been happily worded, or that its proposed place in the Code had been happily selected. He would, with the permission of His Lordship and the Council, alter the amendment and insert, at the end of section V, the following words :—"These four grades of officers shall, in matters not otherwise provided for in this Code, be subject to the orders and control of the Local Government."

After some conversation the Council divided :—

Ayes.	Noes.
Hon'ble Mr. Strachey.	His Excellency the President.
Hon'ble Sir. R. Temple.	His Honour the Lieutenant-Governor.
Hon'ble Mr. Ellis.	His Excellency the Commander-in-Chief.
Major General Hon'ble H. W. Norman.	Hon'ble Mr. Stephen.
Hon'ble Mr. Chapman.	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr Stewart.

So the amendment was negatived.

The Hon'ble MR. CHAPMAN then moved—

"That, instead of section 126, the following be substituted :—

'126. A Police officer making an investigation under this chapter shall, day by day, enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances elicited by his investigation. He shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District any part of such diary which he considers it to be important that such Magistrate shall know.

Daily record of proceedings.

"The Magistrate of the District may call for and inspect such diary.

"In cases where there is no District Superintendent of Police, the Police officer shall forward day by day a copy of the diary to the Magistrate of the District.

"Such diary shall not be evidence of the facts stated therein, except against the Police officer who made it, nor shall it form part of the record.

"Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. The prisoner and his agents shall not be entitled to call for them, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but if they are used by the Police officer, who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.'"

Use of diaries by Criminal Courts.

He said, the effect of this amendment would be to retain the law as it now stood, whereas the Bill proposed to do away with all legal provision as to the particular authority to whom this diary should be sent.

He was happy to think it would not be necessary for him to enter on a long disquisition on the vexed question of Police administration, because he believed he was quite at one with His Honour the Lieutenant-Governor, and his hon'ble friends, Messrs. Strachey, Inglis and Robinson, in condemning the theory that the Magistrate should sit with solemn judicial dignity, and only adjudicate on such evidence as might be brought before him. On the contrary, he (MR. CHAPMAN) was very decidedly of opinion that it was the bounden duty of the Magistracy of this country to co-operate energetically with the Police in the detection and suppression of crime,—to be in short 'a terror to evil-doers'. But while holding this view, he was not prepared to go the length of saying that there should be no separate Police organization. If District Superintendents of Police were to be maintained at all, it was essential that this diary should be forwarded to them without delay. It was particularly necessary that the history of the crime of a District should be contemporaneously recorded in one central office. Let the Council consider the great advantage of District Superintendents being able promptly to communicate with each other the intelligence of the commission of organized and systematic crime. Again, if the Superintendents were not kept immediately informed of the occurrence of every crime in their Districts, how were they to direct and stimulate the exertions of their men, and how were they to exercise any control over them by way of reward and punishment?

If Superintendents were not furnished with these diaries, he did not see how they could fairly and reasonably be held responsible for the peace and security of their Districts. He would have them responsible to the Magistrate of the District and to him alone.

This question had been very fully discussed in Committee. The principal arguments he (MR. CHAPMAN) had heard adduced in support of the change were, that it was advisable that the diary should be sent to the Magistrate nearest the scene of the crime, when the Superintendent might be at a distance, and that the subject was one which had much better be left to the Local Government to deal with as they might think best. His reply to the first of these arguments was, that the provisions of sections 137 and 138 of the Bill rendered it obligatory on the Police to send intimation to the

nearest Magistrate having jurisdiction, and made it the duty of such Magistrate to repair to the scene of the crime, if necessary, and to assist in its investigation. The fullest means were thus provided for the Magistrate being promptly informed, and for his being left without excuse if he failed to do his duty in the way of direct and active personal exertion. Then, as to the argument about discretion being left to the Local Government. The system of District Superintendents had now been established throughout India, and if the principle he had advocated was sound, he thought there was no question as to the advisability of its being made generally applicable. He (MR. CHAPMAN) would earnestly beg to point out to the Council that his amendment involved no change in the existing law; and that he considered the onus of showing cause for the alteration contained in the Bill rested on his hon'ble friends who differed from him. The alteration was calculated, in his opinion, to introduce a most dangerous and radical change in the Police organization of the country.

The Hon'ble MR. ROBINSON said:—"My Lord, the object of this amendment is to restore to the Bill the purely executive direction which is contained in the existing Criminal Procedure Code as to what is to be done with the diary which is directed to be kept by a Police officer who may be investigating, on behalf of the Magistrate having jurisdiction, into a cognizable case.

"The provisions of the existing law in respect to this matter import an uncertain sound into it in respect to the relation between the Police who are engaged in tracing out an offence, and the Magistrate before whom the case is eventually to be brought for trial or committal, and they may be used—and, in fact, probably have been used in some places—to justify the executive Police in refusing to the local Magistracy information as what the Police are doing in respect of a case for which the Magistrates are responsible in their executive and judicial capacity, as well as the Police.

"The law, as the Council are aware, requires that immediate intelligence of the occurrence of any grave crime be conveyed to the Magistrate having jurisdiction. He is empowered to take up the case himself and to adopt all means for detection. But, in fact, he generally leaves this, as is intended, to the Police, who are, in the words of the Police Law (Act XXIV of 1859), 'placed at his disposal for the detection of crime' within his (the Magistrate's) division.

"The executive Police are, on their part, required to keep a diary of all steps taken during this professional investigation for the information of the Magistrates and Courts, if required, and of their own superior office.

"The object of this provision is sufficiently obvious. It enables the responsible Magistrate, as well as the superior officers of Police to see what is being done from day to day in the case, and to judge whether the Police are doing their duty; it secures a valuable check against irregularity of procedure in respect to the particular case to which it relates, and if such irregularity occurs, it provides a useful auxiliary towards the detection of them.

"Now, it is clear that no one can be more directly interested—to no one is this information so indispensable—as to the responsible Magistrate within whose jurisdiction the offence occurred and who has finally to dispose of the case. This officer is generally near the spot, and if kept constantly advised of what is going on, he has peculiar advantages for aiding the Police by his influence and advice as to the detection of the offence and the hearing of any evidence which may be forthcoming. He enjoys, too, special opportunities for hearing of, and checking in the bud, any impropriety into which the executive Police may be betrayed during the investigation. It is therefore all-important that this responsible Magistrate should know what is transpiring through a daily diary.

"The diary is a quasi-judicial document. It may be called for by Courts, &c., and is therefore a record of ascertained facts and occurrences, not of Police theories and surmises in respect to the circumstances of the offence, or of unsifted suspicions and intelligence. These need not be brought

on record until they have passed into the category of judicial evidence. This diary is in fact a confidential but authoritative communication between the official persons who are both responsible for the case, namely, the Magistrate having jurisdiction and his executive Police, and the former must have it. A copy of this daily diary can be sent to the District Superintendent of Police, or a mere mention of the matters noted thereon can be shown in the general diary of Police working, &c., within the station through the Superintendent, and the information it contains goes to the Magistrate of the District.

"I hope the Council will thus see that there can be no doubt that the Magistrate having jurisdiction should have this document submitted to him, and that the efficient working, as well as the due support, of the Police are essentially involved in thus coupling-up these two bodies in respect to their joint responsibilities for the conduct of a case in the early stages of investigation, and thereby insisting on mutual confidence and co-operation and efficient check.

"The present law only provides that a copy of the diary is to be sent to the District Superintendent of Police, who shall bring to the knowledge of the Magistrate of the District what he sees fit, and so on; but it does not deny the same information to the Magistrate having jurisdiction.

"Now, it appears that this somewhat limited and fragmentary direction of law has been construed by Police officers in some parts as justifying them in refusing information in respect to any individual case to the really responsible official, namely, the Magistrate having jurisdiction, and as justifying them in simply ignoring, in their Police detection, every and any Magistrate, except the Magistrate of the District, to whom the District Superintendent of Police communicates as much or as little as he pleases about cases, subject, of course, to the chance of his requiring the actual production of the diary. Police officers of this school simply treat the subordinate executive Magistracy of all grades as purely judicial officers, before whom they prosecute their cases very much in the same exclusive spirit as they would before a Sessions Court, and deny them any communication with the Police in respect to cases actually pending before them.

"Where this is the position assumed by the Police throughout a district, I am sure things cannot possibly work with the harmony and mutual confidence which are indispensable. The Police place themselves in a position alike too weak as respects real efficient working and detection—for they cut themselves off from the aid and advice of the Magistracy of all ranks—and too strong as respects the relative positions of the Magistracy and the executive Police. In fact, they override the Magistracy.

"The Select Committee on the Bill perceived how the direction of the existing law, thus alluded to, is capable of misconstruction, and myself and others probably would have wished to see things put on a clearer and more distinct footing by law, and would have incorporated a direction in the Bill to the effect that the diary of each special case shall be submitted to the Magistrate having jurisdiction, a copy being sent to the District Superintendent of Police, who would bring to the notice of the Magistrate what he thought worth informing him about. But the matter is of so purely executive a character that as suggested in the early discussion on the reconstruction of the Code of Criminal Procedure, it had better be left in the hands of the Local Government. These best know the state of their Police and Magistracy, and may safely be left to give directions as to whom the diary is to be submitted to in a manner that will best suit all parties.

"I am afraid I have unduly occupied the time of the Council on this matter. I have done so because the thing has been made a great deal of—a very great deal more than is at all desirable. It has been represented as the very keystone of Police working, and of the District Superintendent's control over, and responsibility as to, the District force, and so on.

Why, it has no more to do with the internal economy and efficient working of the general Police, than the proceedings of a regimental Court Martial has to do with the command or efficiency of a regiment or brigade. It is a short skeleton diary relating to an individual case under investigation by the Police, and has nothing to do with internal economy of the district force, or even of the station within which the offence occurred. The general administration is conducted from information supplied by station-house reports, general diaries, occurrence reports and the like, which come together in the Superintendent's office from all parts of the district, and are there collated. From this general information, a daily report of all important occurrences in the district is prepared, and laid before the District Magistrate every twenty-four hours. Amongst other items of information thus communicated are of course notices of what has taken place in respect to each of the important cases in the hands of the Police all over the district. It is exactly of the same character as the 'case-diary' which has been described and which is kept for the use of the Magistrate having jurisdiction and of the Court.

"The matter is purely executive and of little importance as respects the administration of the general Police of a district, and the Bill, as now drawn, not only removes a source of misapprehension, but leaves Local Governments to adjust the matter in the manner that best suits the character of their Police and Subordinate Magistrates.

"I trust that the Council will reject the amendment."

The Hon'ble MR. INGLIS said:—"MY LORD,—I hope the Council will reject this amendment. I thinkthat the use these Police diaries are to be put to its a purely executive matter, which should be left open for the orders of the Local Governments, and is altogether foreign to the Bill now before the Council. Accordingly the Select Committee, after considerable discussion, decided to omit any direction on the subject.

"Act V of 1861, the Police Act, is curiously vague in the matter of the relations between the Magistrate of the District and the District Superintendent of Police, and very widely different opinions had been held on this subject, all supported by arguments based on the provisions of the Act. One party contending that the Police are a body altogether separate and independent of the Magistrate of the District; the other, that they are completely under his authority and control: both of them, however, referring to Act V in support of their opinions. Those who consider that the Police should be an independent and separate department refer to those clauses in the Procedure Code which the Committee have decided on omitting as indicating a vague way that the Police are, to a certain and undefined extent, independent of the Magistrate of the District. Indeed, the Hon'ble Mr. Chapman says that his intention in now proposing their re-introduction is to show that it is the District Police Officer, and not the Magistrate of the District, who should be held responsible by Government for the suppression and detection of crime.

"Now, I hold a very decided opinion on this point. I consider that the Magistrate of the District should be, in all matters and in all departments, the supreme head and controlling authority, and that the proper position for the District Superintendent of Police is that of one of his Assistants in special charge of the Police; but whether this opinion is correct or not, I think that this is neither the time nor the occasion on which it should be finally decided, and that it would be a mistake to prejudge in any way the decision that may be come to hereafter by the insertion of a couple of altogether unnecessary clauses to a Bill with which they have no proper connection.

His Honour THE LIEUTENANT-GOVERNOR said that he should also vote against this amendment to which he objected, not so much for what it expressed, as for what it really meant. He believed that they were all, including the Hon'ble Mr. Chapman himself, agreed that the District Superintendent of

Police should be under the orders and control of the Magistrate of the District, and yet the Hon'ble Member spoke of the independence of the Police. His Honour believed it would be admitted that no one could speak more authoritatively upon this subject than the Hon'ble Mr. Robinson, and he strongly advocated the subordination of the Police to the Magistracy. The fact appeared to be, as the Hon'ble Mr. Inglis told the Council, that these few words were sought to be inserted in order to maintain a remnant of that Police independence of which the Hon'ble Mr. Chapman had spoken. His Honour thought that the arguments which had been brought forward in support of the amendment were amply met by what the Hon'ble Member in charge of the Bill had said, that it was not desirable to introduce a Police law into this Bill: he told the Council that that was a matter which should not be imported into this Bill, and the Committee thought fit to accede to the Hon'ble Member's argument and leave the matter out of this Bill altogether. In voting now against the amendment, His Honour did so on the ground put forward by his hon'ble friend Mr. Inglis, that it was a Police matter, which each local administration could settle as they thought fit. The question was not whether the District Superintendent of Police should have certain information furnished to him, but whether this law should contain any specific provision upon that point. The fact of no provision upon the point being contained in this Code, by no means involved that the Police Superintendent should be kept in ignorance of what was going on in the District. It would always be in the power of the Executive Government to direct in what form the information should be supplied to the Police Superintendent, or for the Police law to prescribe any particular course. It appeared to His Honour that it was not necessary that, in every petty case of theft, the full proceedings should be sent to the District Superintendent for his information. The determination of such questions should, His Honour thought, be left to the Police law and the executive. The Police was established upon a different basis in different parts of the country; and even from a purely Police point of view, it might not be desirable in all cases that the same rule should be followed. In Bengal, for instance, there were Police Sub-Divisional Inspectors to whom reports were submitted of the occurrences within their jurisdiction. But the result of the proposed amendment would be, that those reports must be sent direct to the District Superintendent, instead of to the Inspector, who would thus be kept in complete ignorance of what was going on within his jurisdiction.

The Hon'ble Mr. Ellis said that he merely desired to express his entire concurrence with what had fallen from his hon'ble friend Mr. Chapman, with the single exception that he did not agree, as his hon'ble friend did, in all points with His Honour the Lieutenant-Governor and the Hon'ble Mr. Strachey on the general question of Police. But that was not a matter which was now under consideration. Mr. Ellis laid stress upon the amendment, not because there was any great difference between it and the section as framed in the Bill, but because he perceived that there was a desire, by a side-wind, to re-introduce the old objectionable system of combining in the same officer the exercise of Police and judicial functions.

The Hon'ble Mr. Stephen knew nothing by experience of the subject under discussion, but he objected to the character of this Code being depreciated by the introduction of these provisions. What his hon'ble friend, Mr. Chapman, proposed was exactly the existing law; but by striking out this section, a wide change was effected in section 7 of Act V of 1861. Take the matter in the way in which His Honour the Lieutenant-Governor put it: what he said was as much as to say that he did not like Act V of 1861; he wanted to put the administration of the Police on a different footing from that in which it stood now. Mr. Stephen thought that Mr. Chapman's exposition of the effect of the amendment was the true one, and he should therefore vote for the amendment so as to keep the law as it stood. If any of the Local Governments did not like the law, it was within their competency to alter Act V of 1861.

The Hon'ble MR. STRACHEY said that it appeared to him to be of little real importance whether the section remained as it stood, or whether his hon'ble friend Mr. Chapman's amendment were adopted. He, for his part, had only one ground for objecting to the amendment. He hardly knew why it was so, but the Council had been told that in this amendment was involved the question whether or not the Police were to have a semi-independent existence. If this were the case, the amendment acquired an importance which did not appear on its face. If there was any question on which he had a decided opinion it was this. As to Act V of 1861, he thought it unnecessary to say anything, because, as a matter of fact, no human being could ever say what the most important section in that Act meant. It had been interpreted in a different way in almost every Province. Sometimes, the District Superintendent of Police had been almost independent, and at another time, the District Superintendent had been a mere assistant to the Magistrate of the District without any independent authority whatever. Act V of 1861 was at different times held to be consistent with both of these opposite views.

MR. STRACHEY spoke of the Bengal Presidency only, and in it he believed there was no Province in which an attempt had not been made to convert the Police into a semi-independent body separate from the Magistrate of the District, the most important officer in some respects in the whole country, the man on whom the whole executive power of the Government in the interior of the District really depended. This separation of the Police from the authority of the Magistrate had done extreme mischief, and he believed there was no part of the Upper Provinces in which the executive authority had not been more or less weakened. During the last few years, however, the tendency had been in the other direction, and the Magistrate of the District had, to a considerable extent, got back his authority. He must give his vote against the amendment.

His Excellency THE COMMANDER-IN-CHIEF said that he would vote in favour of the amendment, as he thought its tendency would be to support the authority of the Sub-Divisional Officers. In reality the District Magistrate and Collector was every thing in the District; he was in fact the king of the District, and the Police ought to be in complete subordination to his authority, and to the authority of the Subordinate Magistrates in charge of Sub-Divisions of Districts.

The Hon'ble MR. CHAPMAN would not, at that late hour, detain the Council with many remarks. He wished distinctly and emphatically to repudiate the idea that he was in favour of making the Superintendents independent of the Magistrate. In his opinion the Police should not be independent of the Magistrate; but, at the same time, their organization should be established on a separate and distinct basis. He would place the Superintendent of Police and his men directly and immediately under the orders of the Magistrate of the District; but this was very different from saying that he should be at the beck and call of every subordinate Magistrate. He supposed that, in an ordinary District, there were some twenty-four subordinate Magistrates of different grades. Now, let the Council consider the effect of diaries being sent indiscriminately to officers of this class without the District Superintendent being communicated with. All he could say was that, if this was to be sanctioned and adopted, then the sooner a financial saving was effected by the abolition of the office of District Superintendent the better. In the course of the consideration of this Bill, his hon'ble friend on his left had told the Committee some very startling facts connected with Police and Magisterial administration in the Madras Presidency. It seemed there were officers in charge of police-stations on Rupees 14 per mensem, and Magistrates on Rupees 40. Let the Council consider for a moment the effect of two corrupt officers of this class playing into each others hands?

His Honour the Lieutenant-Governor had said that he (MR. CHAPMAN) was endeavouring by a side wind to introduce a very important change. He

could not too plainly say that there was no foundation whatever for such an assertion. All he wished was to retain the law on its present footing, and it was His Honour, and Hon'ble Members who shared His Honour's views, who wanted to effect what he (MR. CHAPMAN) considered a most dangerous innovation. The matter was of the greatest importance, and he begged the Council would carefully consider the effect of their votes. He could not too strongly assure Hon'ble Members, and especially his friend Mr. Strachey, that it was not his wish or intention to place the Superintendent in a position of independence towards the Magistrate of the District. All he contended for was that the Superintendent should not be liable to be interfered with, and his authority and responsibility weakened, by every Subordinate Magistrate of the District.

The question being put,

The Council divided—

AYES.	NOES.
His Excellency the Commander-in-Chief.	His Excellency the President.
Hon'ble Sir R. Temple.	His Honour the Lieutenant-Governor.
Hon'ble Mr. Stephen.	Hon'ble Mr. Strachey.
Hon'ble Mr. Ellis.	Hon'ble Mr. Inglis.
Major General the Hon'ble H. W. Norman.	Hon'ble Mr. Robinson.
Hon'ble Mr. Chapman.	Hon'ble Mr. Stewart.

The numbers being equal, the President gave his casting vote with the Noes.

So the amendment was negatived.

The Hon'ble MR. CHAPMAN then moved—

"That the following be inserted as paragraphs one and two before the present paragraph one of section 188:—

"'Offences under chapter XX (relating to Marriage) and chapter XXI (of Defamation) of the Indian Penal Code, and offences of the class described in section 148 of this Code, may be compounded. No other offence may be compounded.'"

"Instead of the Exception to section 214 of the Indian Penal Code, the following shall be read:—

"'The provisions of sections 213 and 214 do not extend to any offence which may be lawfully compounded.'"

It had been pointed out to him (MR. CHAPMAN) that the Code would be defective in a very important particular if no specification were made of the offences which might be compounded. He had consulted a Judge of great experience, and the only doubt that authority had expressed was whether the amendment went far enough, and whether other offences, especially those relating to religion, might not be included. His amendment, if agreed to, would have the effect of clearing up perhaps the only really obscure and doubtful provision of the Penal Code.

His Honour THE LIEUTENANT-GOVERNOR said that he must oppose this amendment. It appeared to him that the matter required elucidation in a great degree. No one understood the present law, still it was very difficult to deal with, and could not be disposed of in this summary way. The offences included under section 148 of the Code included a great variety of cases, and HIS HONOUR did not think that the Hon'ble Member had exercised sufficient care in drawing up the amendment: there might be included in it a vast number of cases that ought not to be compounded. You might go through hundreds of cases that would fall within the provisions of section 148 and ought not to be compounded, and there might be many other cases which were not included in the amendment, but which ought to be compoundable.

The Hon'ble MR. STEPHEN said that he hoped to be able to confirm, in the strongest way, what had fallen from His Honour the Lieutenant-Governor on

this subject. Take the matter step by step. Offences under chapter XX of the Penal Code, relating to Marriage, were included as compoundable offences. MR. STEPHEN would ask whether it was intended that bigamy, which was punishable with seven years' imprisonment, should be made a compoundable offence? The Hon'ble Member had, no doubt, thought only of the case of adultery. Then, we came to the chapter relating to Defamation, with regard to which MR. STEPHEN would say nothing. Then, we came to the offences included under section 148 of this Bill, the effect of making all of which compoundable offences would be something frightful: you would, in fact, put in the power of people to extort money by making all those offences compoundable. Look again to the offences under chapter X of the Penal Code, regarding Contempts of the Lawful Authority of Public Servants, most of which were punishable with imprisonment for six months. A person might obtain an order from a public servant under that chapter directing another person to abstain from doing a certain act, and then compound the matter by offering not to put that order into execution. What an instrument of extortion and oppression would be put into the hands of people by such a provision! Then, again, take offences under chapter XIV of the Penal Code relating to Offences affecting the Public Health, Safety, Convenience, Decency, and Morals: there were hundreds of such offences in which the public were interested! The truth was, that this was one of the most obscure questions with which one could deal, and any attempt to provide for it by a definition of this kind would be most hazardous. Take the offence under section 323 of the Penal Code, voluntarily causing hurt: although the offence there provided for was of the most personal nature, a person would not be able to compound it, because the punishment for voluntarily causing hurt extended to imprisonment for one year. Take, again, the case of assault with intent to dishonour; that was an offence which a person could not compound, because the punishment extended beyond six months' imprisonment. The fact was that, until a law was introduced which defined actionable wrongs in the way in which we had tried to define contracts, you would not be in a position to say what offences were compoundable and what offences were not compoundable: the only other way of doing the thing was to go through the schedule to the Code of Criminal Procedure, case by case, and add a column stating what offences were compoundable and what offences were not compoundable.

The Hon'ble MR. CHAPMAN said that, after what had fallen from the Hon'ble Mr. Stephen, he would, with the permission of the President, withdraw the amendment.

The amendment was by leave withdrawn.

The Hon'ble MR. CHAPMAN then moved—

"That the following words be added to section 295:—

"'For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.'"

In doing so, he said, he was no advocate for interfering with the independence and authority of the Magistrate of the District, but he considered that there should be no doubt as to the right of the Judge to call for, for purposes of revision, the proceedings of either the Magistrate of a District or of any other Magistrate subordinate to him.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved the following amendments:—

"That, at the end of section 186, the following be added:—

Where accused person does not understand the proceedings.

"If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit."

That the following clause be inserted after section 274:

"The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six."

Saving sentences on European British subjects.

That the words "and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six" be inserted after the word "Magistrate" in line 8 of section 487.

The Motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved that the words "whether European or Native" be inserted after the word "Troops" in line 5 of section 484.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 17th April 1872.

CALCUTTA,
The 16th April 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

GOVERNMENT OF INDIA.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Wednesday, the 17th April 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C. B.
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C. S. I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.

INCOME-TAX BILL.

The Hon'ble SIR RICHARD TEMPLE presented the report of the Select Committee on the Bill for imposing Duties on Income.

The Hon'ble SIR RICHARD TEMPLE also applied to His Excellency the President to suspend the Rules for the Conduct of Business; and, on the suspension of the Rules, moved that the report be taken into consideration. He said that perhaps he could not do better than to read out the report of the Committee, which ran thus:—

"A difference of opinion exists amongst the members of the Committee as to the propriety of re-imposing the income-tax in any form. Accordingly, we express no opinion upon this subject, but confine ourselves to the details of the measure, assuming that a majority of the Council decide that it ought to be passed. We think that if this is done, the best course is that adopted in the Bill, namely, to re-enact Act XII of 1871, with the verbal alterations necessary to adapt it to the present year, and to exempt from its operation incomes below one thousand rupees per annum.

We have added a clause to section 22 by which persons who were, under Part V of Act XII of 1871, assessed on incomes of one thousand rupees and upwards, will continue to be assessed at the amount which they paid under that Act: such persons will, however, be able to apply for reduction or cancelment of their assessment.

If this recommendation be adopted, the inconvenience of a re-assessment will, in a large number of instances, be avoided."

He had now to ask that the report be taken into consideration. Regarding the general merits of the question before the Council, he had in his recent Exposition of the Budget Estimate said all that he had to say. Therefore he would not now say anything on that subject. Whether or not he should say anything would depend upon what fell from his hon'ble colleagues. If there should be a general concurrence of opinion in favour of the Bill, he should not trouble the Council with any remarks; but if there should be made in the course of the debate any observations which seemed to call for reply, he hoped he should be prepared to offer such explanations as might be necessary.

The Hon'ble MR. BULLEN SMITH said:—"MY LORD, although I adhere to the views I have previously expressed in this room when other income-tax Bills have been brought forward, it is not my intention to offer any opposition to the measure now before the Council. Had it been proposed, as has hitherto

been the case, on the plea of absolute financial necessity, I would, on the figures contained in the budget statement, have challenged any such assertion; but the Council has been distinctly told by your Excellency and by other members of the Executive Government that this budget is not to be considered on its merits, but to be looked upon as provisional, owing to the peculiar conditions under which the Government of India is being carried on. After such a declaration I do not think it my duty—indeed, I should hardly consider it consistent with the respect due to your Lordship as the present head of that Government—to propose any substantive amendment upon the consideration of the Bill now before the Council. This Bill contains two modifications upon its predecessor—one raising the limit of exempted incomes to rupees one thousand, thereby carrying out the proposition made last year by our hon'ble colleague, Mr. Cowie, with how much reason and moderation the figures now before us show. The second modification to which I have alluded is that introduced by the Committee, in accordance with which payment of the tax will be accepted from all who so desire, on the basis of last year's assessment, without further inquiry or trouble. This, my Lord, I consider emphatically a move in the right direction. I believe that by it friction, extortion, and opportunities for evil in the working of the tax, will be diminished; and I believe that it will be thankfully accepted in this light by the district officers. It is of course a concession pure and simple on the part of Government, but a concession which I believe will not cost them much financially, while, in other respects, it will well repay them. I am heartily glad that Government has seen its way to these two important modifications of the Bill lately expired, and I freely admit that thus modified the income-tax comes before the Council in a much less objectionable form than previously. I consider, however, that the annual introduction of an income-tax measure is a great and almost an unmitigated evil, tending much to keep alive and foster the large amount of bad feeling which the tax has undoubtedly provoked, and forbidding that finality and certainty as to what they have to pay which, I believe, the people of this country greatly desire. In this sense, therefore, and without in any way committing myself to an opinion or course, I do join with my hon'ble colleague, Mr. Ellis, in hoping that, if the subject of an income-tax is again brought forward, it will be in the form of total abolition or retention, I do not say permanently, but at least for a term of years at a fixed rate and on continuing assessments at the option of the assessees. I have always admitted that there were *pros* and *cons* in this matter—that there is something to be said in favour of a light tax with a liberal figure of exempted incomes. I know that some hon'ble members hold that there are large classes who benefit much by our rule, but who cannot otherwise be made to pay anything like a fair quota to the State. Some hold that there are other interests calling more urgently for relief, while my hon'ble friend, Mr. Robinson, holds strong views as to the entire exemption of certain classes, whatever the amount of their incomes. All these views form fair ground for inquiry and consideration; but whatever may be the result, I utterly deprecate the continuance of this tax as a varying budget-adjuster, as we have been lately accustomed to see it used. Whatever may be said upon direct taxation, that at least ought not to be its character in this country. I need not say how cordially I join His Honour the Lieutenant-Governor in hoping that, if this income-tax is again brought forward, it may be at an earlier period of the Calcutta session of the Council. I shall rejoice if the Government find themselves, as the current year advances, able to give up this income-tax altogether; and I am disposed to consider Government morally pledged to abandon it, when the plea of urgent financial necessity can no longer be urged in its behalf; but, if not, then let it come forward sufficiently early to have bestowed upon it the mature examination and consideration to which the importance of the subject entitles it, but which the Council have never the opportunity of giving, when the Bill is, as on the present occasion, moved for, introduced, considered and passed, within the limited period of ten days. Turning for a few

minutes from the consideration of the Bill immediately before the Council to the budget statement, or exposition, of which it is the practical result, one is primarily arrested by the enormous figure of the cash balances, about which we have read and heard so much during the last ten days. The hon'ble member regards them, when standing at 24¼ millions, as satisfactorily high, but not too high, although elsewhere the figure is spoken of as one at which they ought not to continue. To the outer world they appear extravagantly and wastefully high. The hon'ble member apparently considers his overflowing treasury the crowning glory of his finance, while, to other minds, it forms the chief reproach of the budget—the portion of it, above all others, of which the least can be said in the way of approval. I have spoken elsewhere of the unfortunate character of the hon'ble gentleman's estimates, and this is strikingly illustrated in the matter of these cash balances. That of 1870-71, which was estimated at 10½, becomes 16 millions; and that of 1871-72, estimated at 17¼, issues in 24¼, or somewhat more than double what Mr. Massey six years ago estimated was ample to carry on the service of the country, the tendency being to decrease. By way of apology, apparently, for these enormous differences, the hon'ble member tells us that they result from the adjustment of a vast account; but unfortunately the errors are vast, even beyond the vastness of the account, being to the extent of fifty per cent. in the one case, and forty per cent. in the other. It is impossible that discrepancies such as these can escape unfavourable notice, and the hon'ble member can hardly complain if his estimates generally are regarded with disfavour, and his declaration that, without this income-tax, the receipts of the year are likely to fall short of the expenditure considered as a mere opinion, not a fact. The public know that 4½ millions of this money are the *bonâ fide* surplus of the last two years, and they naturally refuse to believe that half a million of income-tax cannot be done without, and that 6½ lakhs of rupees is the utmost relief this bursting treasury can afford. The hon'ble gentleman's capacity is well known and famous for writing reports; but I confess that I have not been able to find in his exposition any satisfactory account of these cash balances, or rather why they have been kept at this enormous figure. It can scarcely have been necessary, in view of the five-per-cent. conversion, which operation would then be, to my mind, dear at the price: and it is curious that, while 24¼ millions is now considered not too high, the estimated amount of seven millions less was announced this time last year without any misgiving. In reading over the part of the exposition relating to these cash-balances, it strikes me that the hon'ble gentleman is himself not quite comfortable regarding them—that he recognizes the fact that a country, the revenue account of which can, by his own account, barely be squared, has no right to have an accumulation equalling nearly half its entire income. Allusion is made to a full treasury and high State credit, but I find nothing in this exposition to shake my opinion that, with a much smaller cash-balance, the State credit would have been quite as assured, and the service of the country have been quite as efficiently carried on. Accept this view, and we find in these enormous balances no real source of satisfaction, but, on the contrary, an indication of unreliable estimates and bad finance. Closely allied to the cash-balances, is the subject of loans, and under this head the exposition puts before us another peculiar financial feature. With more money here than could be employed or was required, we have actually during the past year been adding to our loan-liabilities in England. We are told that although the Secretary of State had announced his intention of borrowing 2½ millions, he has actually only borrowed 1½; but the question arises naturally, why has anything been borrowed at all? The hon'ble gentleman puts in his exposition an apologetic sentence about 'times and seasons for borrowing,' which have doubtless been well considered; but I scarcely think he can be in earnest when he asks us to accept this as a reason for late loans. That must be a cheap money-market indeed which offers inducement to raise loans for which there is no

need, present or nearly prospective, and I confess I have never known the money-market in that delightful condition for borrowers, which would indeed indicate a rate of interest hardly more than nominal. Take, for instance, this new loan of 1½ million, which was not needed for the past year, and is not likely to be wanted for the present, but may come into use in 1873-74. The rate of interest payable is not mentioned, but if we put any saving under this head by this happy choice of time and season on one side, and on the other the saving of no interest at all for two years, I apprehend the calculation will show a transaction not very profitable to the State. When last year the hon'ble member stated boldly that the Secretary of State had intimated his intention of borrowing 2½ millions, I put to the hon'ble member the question, whether such loans are contracted under requisition from the Government of India and with their consent?—a question, I think, clearly within the province of any Member of this Council, when he is asked to give his consent to new taxation. That question, with Your Lordship's permission, I would to-day repeat, although I fear the reply, if any is vouchsafed, can be but in one sense, as I cannot conceive it possible that this Government can have asked for any addition to our loan liabilities during the past year. In this view I desire to renew my protest against this system of quiet borrowing at Home, and to repeat what I said last year as to the vital importance of Indian finance having only one head, and that head here. In the records of the Parliamentary Committee now sitting we find no lack of reference to requisitions from India, when expenditure has to be explained or vindicated. Let the same rule apply to matters financial; let the Secretary of State be in this, as in other respects, practically the Agent of the Government of India, with whom rests the real responsibility. As matters now are, it appears that the financial plans of that Government are liable at any time to derangement, and the loan liabilities and other expenditure of the country to increase, at the discretion of an absent and irresponsible authority, subject only to such control as is at present exercised by Parliament, the value of which we have not as yet had much cause to appreciate. In conclusion, my Lord, I wish to say a single sentence as to the conversion of the five per cent. loan alluded to in the budget exposition. We are told that the stock-holders were offered the option of transferring their holdings to a new 4½ per cent. loan. Theoretically, all certainly had this option given them, but practically it was denied to many, the Financial Department having attached to the option conditions which put it absolutely beyond the reach of many. These conditions were foreign to all previous practice of the Government, and foreign to ordinary business custom, and therefore such as the stock-holders had no reason to expect or prepare for. A simple alternative measure which could not have affected in the smallest degree the success of the conversion scheme, nor imperilled a rupee of Government money, was proposed to the department of which the hon'ble member is the head, but at once rejected. I do not say that bare justice was not done—far from it—but I hold that, in matters such as these, the Government should exercise the utmost liberality consistent with the interests of the State, and I exceedingly regret the harsh line adopted by the Financial Department on the occasion in question."

The Hon'ble Mr. STEWART said:—"My Lord,—I do not intend to occupy the time of the Council by any endeavour to follow the Hon'ble Finance Member through the mass of statements and figures contained in his budget; I shall rather select for remark a few points which seem to me important, both in themselves and in relation to the policy with which they are connected. And first I would acknowledge the clearness and explicitness of the Hon'ble Member's exposition—an exposition which deals with certain facts which I cannot regard as altogether satisfactory, and asserts certain conclusions in which I cannot agree, but which is, on the whole, very plain and intelligible. I agree with Sir Richard Temple in his remarks regarding what he has termed 'windfalls,' both in regard to the light in which they should be regarded, and the manner in which they should be treated. I see no objection to their being included in the general

revenue so long as they are clearly entered in the accounts, and brought to notice in dealing with the financial position; on the contrary, I see some advantage in this course, for, if these items are dealt with separately and exceptionally, we must expect that certain items of expenditure will also be dealt with exceptionally, and this I think would be to admit a dangerous principle, and one which under pressure might lead us further than could be justified or foreseen. My Lord, not the least striking fact of the accounts before us appears to be the large and unexpected surplus disclosed alike in 1870-71 and in the year just closed—a surplus amounting to 1½ millions in the former, and 2¾ millions in the latter against a Budget Estimate of a surplus of £200,000 and £93,000 respectively. Now, there is here a very wide divergence between the calculations on which the financial policy of the past two years was based and the figures which represent the actual or regular estimated receipts of these years, and I am not prepared to accept as an altogether satisfactory explanation of this extreme divergence the variations in the Opium receipts and the other incidents which the hon'ble member has offered as its justification. I fully admit that Opium, as it is a very large, so it is also an extremely speculative constituent in the receipts, and one which it is probably impossible to forecast with exactness; but I think it is almost as unwise to err on the side of too great caution as of too little; and when I reflect that, during the five years ending with 1871-72, the receipts from Bengal Opium have been under-estimated four times, and that not by small amounts but by sums varying from half a million to a million and a quarter per annum, and averaging, I think, about £850,000, and that they have only once been over-estimated by an amount of £330,000, I think I may fairly conclude that the error of our finance in this matter has been not an over sanguine but an unnecessarily gloomy measurement of prospects. I will not deny to the Administration and to the Finance Department the credit of those reductions in expenditure which they claim, and which have doubtless contributed to the surplus of the last two years; on the contrary, I would acknowledge these reductions, and express my earnest hope and full belief that the Government of India will not halt in their anxious endeavours to reduce expenditure still further where that may be practicable. What I do say is, that I think these reductions should have been more clearly foreseen and more generously allowed for. In estimating the financial position for the present year, I think that this error of over-caution is again visible. I cannot think that an estimate of rupees 1,200 for Opium is sufficient in view of existing values, of the quantity to be disposed of, and of prospects generally. I see nothing in the prospect before us to render it necessary to base the estimate on so heavy a decline from present currency; indeed, looking at the matter broadly, and at the same time cautiously, and making every reasonable allowance for contingencies, I think that the estimate of the year might fairly have been taken at at least rupees 1,250, and even that I should consider low. To my mind there is something re-assuring in the opinion expressed by H. M.'s Consul at Hankow, in the report lately published in the *Gazette of India*, that the consumption of Indian Opium is not likely to be seriously affected by any increase in the growth of the indigenous drug, the consumption of the two descriptions resting on the tastes and requirements of entirely different classes of the Chinese people. I think that, inasmuch as the average sale-price of Bengal Opium during the last five years has been rupees 1,284 per chest, and inasmuch as there seems to be nothing to warrant the expectation of any very sudden or extraordinary fall, rupees 1,200 is a too low, not as the hon'ble member puts it, 'a safe and moderate estimate.' I think that, judging by the past, we may at least be satisfied that the estimates of receipts for the current year are not overstated, and that the estimates of expenditure are not under-stated; and that I think the receipts are under-estimated in the matter of Opium. I have said, and, on the whole, I am prepared to anticipate that the result of the hon'ble member's proposals, if they are accepted, will be another year of surplus. And this brings me to the subject im-

mediately before the Council—the revival of the income-tax. My Lord, I shall not vote lightly in the matter, but I must vote against this proposal. I am of those who think the income-tax, a tax unsuited to this country, intensely disliked by the masses of the people, and a tax above all others the most likely to lead to injustice and oppression. It is a tax which, however it may since have come to be regarded, was imposed in the first instance to meet a great fiscal emergency, and under, if not, a pledge from Government, at least a strong and justifiable conviction on the part of the public, that the Government regarded it as a temporary measure. The Right Hon'ble Mr. Massey, in 1868, described an income-tax in the words of the greatest of living financiers as a 'mighty engine' of finance. My Lord, it is a mighty engine of finance; it is an engine, in my humble judgment, suited above all others to emergent circumstances; but it is an engine which, especially in this country, should be reserved for such circumstances; and I do not think that such circumstances exist at present. I have not had the advantage of considering the working of the tax in the light of the full information which I should have liked to possess on so grave a subject; but, viewed in the light of such information as I have before me—in the light of the circumstances which attended its original imposition and subsequent renewals—in the light of what I conceive to be the present financial position, and the purposes for which such a tax should be reserved, I do not feel justified, even on due consideration of the exceptional position of the Government (and I assure your Lordship that I have fully considered this subject), in voting for its revival. I do not overlook the fact that if the tax be not re-imposed now it may be somewhat difficult, should the Government hereafter determine on proposing it as a permanent part of our fiscal system, to re-impose it in normal times; but I should be glad to see the machinery broken up, for I think the tax unsuited for times of peace and plenty, while I do believe that should, unhappily, a time of grave emergency or disaster again overtake us, the people of this country will cheerfully consent to its re-imposition, all the more cheerfully and all the more readily in that they were relieved from its burden when its burden could be dispensed with. If, however, this Bill should pass, I shall have satisfaction in thinking that it has been materially modified in the right direction, for I regard the exception of incomes between Rupees 750 and 1,000, and the acceptance of last year's assessments as the basis of the payments for this year, as two most wise and important concessions—concessions which, as regards the present year, will go far to mitigate, though they cannot remove, my objections to the impost, or reconcile me to see it still occupying a place in our fiscal system. My Lord, I have heretofore understood that the object of our finance was so to arrange as that revenue and expenditure within the year might about balance each other: and no doubt this is still the object, but there are certain expressions in the hon'ble member's statement which lead me to doubt whether this is now so singly and directly as formerly the end that is aimed at. In referring to the surplus of 1870-71, the hon'ble member remarks that that surplus was wanted as 'a partial set-off against the deficits of former years;' and, again, our hope is that, on the combined result of a series of years, there will be a sufficiently even balance between the incomings and outgoings of the Treasury.' Now, I fear that with such an aim, or even—for I do not think this is the aim—with such a tendency as this, we might drift into a condition not to be contemplated with satisfaction; for if one year there is a surplus we may be told that it is required to compensate for former deficits, and if another year there is a deficit, we may be told, though I do not think we will, that the deficit may stand against a previous surplus. The only safe system, as it seems to me, is year by year to finance for an equilibrium or slight surplus, and if, as doubtless there will be, there is on one year a surplus and on another a deficit, to allow for or recoup that surplus or deficit in the year following. The hon'ble member has referred to the trade of India in terms of satisfaction. I regret that, as regards the import trade of Bengal, I cannot share in his satisfaction. This trade for a long time past has not on the whole been profitable to

those engaged in it, and it should be borne in view that had it not been for the cheapness of money in England and the consequent facilities for enterprise of this nature, the imports would probably have been even smaller than they have been. The cash balances have been referred to by the hon'ble member as 'satisfactorily large though not too high for the requirements of the country, present and prospective.' Now, the cash balances amount to over 24 millions, and this seems in the light of probable requirements, and of the declarations of previous ministers, an amount altogether excessive and out of proportion. Previous Finance Ministers have stated 10 to 12 millions sterling as the balance required for the current expenses of the State, and I think that it behoves us to enquire what means have been adopted to utilise the excess; what return has been received from this large capital, part of which is admittedly derived from the proceeds of interest-bearing loans? I cannot find in the explanation of the hon'ble member that these sums have not been lying idle, but have been made to subserve the interests of commerce, any satisfactory reply to this enquiry; for I submit that it is no part of the duty of the State to serve the interests of trade at the expense of the whole country, and that if the principle laid down be adopted there is nothing to prevent its further expansion, nothing to prevent the justification of an impost on all classes for the benefit of one class, or even of one section of a class. If the surplus cash balances of the past year had been utilised at even the most moderate rate of interest, the result would have been a very considerable increase in the revenue or decrease in the expenditure; and I hope in view of the large balances, which I infer the Treasury is likely to be filled with during the current year, that some means will be taken to make use of the surplus over requirements with such an end in view as any prudent private individual would endeavour to arrive at in his own case. It has often seemed to me that it would be advisable to publish a statement of the composition of the cash balances, that the public might know what portion of these is liable to be called up, and what portion may reasonably be reckoned on as more or less permanently available; and I would venture to call the hon'ble member's attention to this point as one worthy of his consideration. I have not overlooked the general information on the subject contained in his statement; but what I suggest is something more specific and detailed. My Lord, I cannot think that such general explanations as that 'time has been required for the elaboration of Canal projects and for determination of the Railway gauge,' and that there are 'times and seasons for borrowing,' are explanations which can justify such a course as that of raising loans in anticipation of requirements. I think, on the contrary, that the country has a right to expect that monies, the interest of which it is called upon to bear, shall not be raised until it is clear that they can be at once utilised. My hon'ble friend has alluded to the politico-economic defects of our fiscal system; but he has not seen his way to propose a remedy. I can understand the disadvatnage at which recent lamentable circumstances have placed him in this matter, and I shall here confine myself to expressing a hope that next year he may be able to tell the Council that he has taken these defects into his consideration with a view to definite action towards their removal. There is only one other point, my Lord, on which I desire to say a word—the subject of Local and Municipal taxation. The former I see has increased within the year by about three quarters of a million; respecting the latter I find no precise information. Together I have no doubt they form a sore burden on the people, one which should by no means be lost sight of in determining the amount and incidence of our taxation for imperial purposes. I think, too, that we shall do well to consider carefully and with extreme rigour any legislation to facilitate the raising of local and municipal taxes which may be asked at our hands by any of the Local Governments, for I agree with my hon'ble friend, Mr. Chapman in much of what he said on this subject on a late occasion; and I do think that the power of indefinitely taxing the people, even for purposes in themselves the most laudable and desirable, is a power

which should not be lightly committed, and which, when committed, should not be lightly continued to any local administration. My Lord, the finances of India are an enormous subject, and I am aware that, probably under any circumstances, and certainly with the limited time and opportunities at my disposal, it is impossible for me even to attempt a satisfactory review of the subject. I have, however, deemed it my duty frankly to express my views, and if in doing so I have spoken too strongly, I hope my hon'ble friend will believe that this has not arisen from any desire to under-estimate or overlook the arduous and most difficult duties of his great position."

The Hon'ble MR. CHAPMAN said :—"MY LORD, looking to the exceptional position in which the Government of India are placed in consequence of the deplorable calamity which has so recently befallen the country, I do not consider your Lordship in Council could with propriety have pursued any course in respect to the Income Tax other than that now proposed.

"It seems to me that the issue is of far greater magnitude and importance than the mere consideration whether the Government could or could not afford to forego this comparatively small sum of £570,000. In my opinion the whole question of continuing direct taxation is to a great extent involved in the decision, for I am satisfied that, if the Government had decided on abandoning the income-tax this year, it would be impossible to reimpose it next year, and this would have embarrassed, to an unjustifiable extent, the action of your Lordship's successor in dealing finally with the question of direct taxation. Therefore, my Lord, on these grounds alone, I am fully prepared to support the Bill under consideration.

"But I feel that it behoves me to go further on this occasion, and to state it as my firm conviction, that the system of directly taxing the wealthy non-agricultural classes of the community of this country ought not to be given up. I cannot reconcile it to my sense of justice that traders and other rich inhabitants of our presidency towns and large centres of commerce, who are entirely dependent on the stability of our rule for their enjoyment of this world's good things should not contribute their fair share towards the public burthen. Whatever the defects of our government may be, there can be no question that we have afforded the most perfect protection against violent outrages and crimes, and I do think the wealthy classes ought to pay for this inestimable benefit.

"I do not say the income-tax is the best way of reaching them, but I do say that, until some better and more effectual means of getting at them can be suggested, I for one should be loth to see it abandoned.

"I have said that, to my mind, the question whether the Government can do without the tax this year is not the main point. For my own part, looking to the extremely cautious and prudent manner in which the estimates have been framed, I am inclined to think the Government would probably not have run much pecuniary risk if they had foregone it. But I am very decidedly of opinion that there are other interests and classes possessing a far stronger and preferential claim to relief than the income-tax payers. There are, first, the Sugar duties in Northern India, which, as I said on a previous occasion, are nothing more nor less than the most barbarous transit duties, and which realized £163,500; there are, next, the export duties on rice, realizing £500,000, the levy of which is directly opposed to the very first principles of economic science; and there are the claims of subordinate Governments and Administrations to additional contributions towards their provincial services, not with a view to enable them to increase their expenditure, but in order to allow of their reducing the burthens which, in some parts of the country, have been recently enhanced. Then, there is the great and most important question of the equalization of the Salt duties; for I take it that, if the facilities of communication continue to increase at the rapid rate they are now doing, it will be simply impossible to maintain much longer the

existing inequalities—Bengal paying Rs. 3-4-0; the North-Western Provinces, the Central Provinces and the Panjáb Rs. 3; and Madras and Bombay Rs. 1-13-0 per maund.

"The manner in which these inequalities can best be removed is a most difficult problem, the solution of which will probably involve the sacrifice of considerable present revenue.

"The injustice and impolicy of maintaining these transit duties on Sugar, these export duties on Rice, and these unequal duties on Salt, are so patent, that I cannot understand how any one can for a moment defend them. Nor can I understand how any one can seriously say that, because we hear no complaint from the payers, because there is no loud outcry, therefore there is no necessity to afford relief.

"My contention is that the Government, supposing them to be in a position to deal finally with the question and to remit the income-tax (which I altogether deny); and supposing them to be able to do without this half million (which I am inclined to admit), could not, with justice to the claims of other classes and interests, have given up the tax.

"My Lord, the objections to the income-tax are chiefly based on the evils alleged to be inseparable from its administration. I admit these evils to have been great, but I do not admit that they are altogether irremediable. I consider they have been removed to a great extent by raising the minimum to rupees 1,000; and by the decision the Government have wisely arrived at of not interfering with existing assessments. The only wonder to me is that, considering the hap-hazard manner in which, at the last moment, year after year, the tax has been imposed on the country, the abuses have not been infinitely greater. Nothing could possibly be worse than the system by which the payers were subjected to all the oppression and annoyance incidental to an annually recurring assessment.

"My Lord, I do hope the suggestion thrown out last year by His Honour the Lieutenant-Governor will be carefully weighed, and that the Government will lose no time in taking into their earnest consideration the best means of dealing with this difficult problem of direct taxation on a broad and sound principle. I may state that, if the income-tax is to be retained, then I think the best system of assessment should be carefully devised, and the best procurable agency employed; in short, that the same care, trouble and expense should be bestowed on this most difficult operation as is now done with such marked success on the assessment of our land-revenue. The assessments thus made should hold good, as against Government, for a fixed period of, say, five years, and no income of less than rupees one thousand should be liable. I would absolutely exempt all incomes derived from lands the settlement of which is subject to periodical revision; I would keep the tax at one per cent. in ordinary times, and I would not allow it to be increased merely to cover short-returns from Opium or other sources of revenue, as was done by my hon'ble friend in 1870-71; but I would hold it in reserve for great national catastrophes, like war or invasion. I do not attach much weight to the objection that no Government would venture to impose an unpopular tax of the kind in times of extreme national danger, because I think that the interests of the classes who ought alone to be taxed are identical with those of the British Government, and that they would cheerfully and loyally come to the assistance of Government. I believe that, in times of real danger, a couple of millions might without difficulty be got by the tax. The Government have a year of plenty in which to mature their plans, and I do say that, by this time next year, if my hon'ble friend, Sir Richard Temple, is not prepared to deal once for all with the question of direct taxation, the country will have just cause for complaint. I cordially agree with what has fallen from my hon'ble friend opposite, Mr. Bullen Smith, as to the grave objections there are to these irritating annual discussions. Such are my views on the income-

tax. I believe we have as yet everything to learn as to the best way of administering it. I believe the abuses to which it has given rise have been much modified. I believe a great deal of the odium it has occasioned is due to the unjustifiably high rate at which it was imposed in 1870-71. I believe the tax to be thoroughly just in principle, and I believe that relief is far more pressingly required in other directions. What I did object to, and objected to most strongly, two years ago was the unnecessarily high rate at which the tax was then imposed. There is, I need not point out, a very considerable difference between an income-tax at 3⅓ per cent. on incomes of rupees five hundred, and a tax at one per cent. on incomes of not less than rupees one thousand.

"I beg to draw the special attention of my hon'ble friend, Mr. Inglis, to the following extract containing the views of His Honour the Lieutenant-Governor of the North-Western Provinces, Sir W. Muir :—

'Sir William Muir has never condemned the main principle of the income-tax (if additional revenue must be raised) in its application to the moneyed classes and wealthy traders. It is apparently the only way in which they can be specially reached, and it is but right and fair that these should freely contribute to the expenses of a government in the benefits of which they so largely participate. But it may be questioned whether the tax should be made (as it has been to some extent of late) the mainstay for the adjustment of Imperial finance, resorted to as a means of squaring the accounts of the year, its rate and reach varying with the amount of the annual deficit of the prospects of the coming revenue. It would seem wiser and more statesmanlike, in dealing with a people so impatient of inquisition, so suspicious of change, and so difficult to reach by our explanations, to make the tax precise and unvarying, both in its reach and in the conditions of its assessment. In short, His Honour would urge on His Excellency's Government the principle that the rate of assessment, once fixed, on a wide view of the temper of the people and the capacity of their resources, at a reasonable figure, should remain so without variation; and that neither condition nor rate should be lightly changed, otherwise than on the occurrence of a great emergency, such, indeed, as would both justify the change in the opinion of the people, and be capable of easy explanation to them. As in the assessment of landed profits, so in the assessment of incomes, the more fixity and permanency arrived at, the greater will be the feeling of rest and confidence In proportion as such a state of comparative permanency can be approached, the suspicion and irritation, the fraud and oppression, and the other evils now incident to the tax, would be diminished, the pressure on the people would be lightened, and the action of the Government would be better understood and its motives more fully appreciated.'

"I am happy to believe that everything I have said has the sanction of that eminent authority.

"I shall now notice, very briefly, what appear to me the most salient points in the regular estimate for the year just closed, 1871-72. Of the total surplus of two millions and three quarters, three-fourths are due to Opium, and my hon'ble friend takes credit for three quarters of a million as direct saving in expenditure. His explanations regarding the latter will be found at pages 9 to 11 of his statement. I wish I could see any indications of these savings having been effected by direct economy. A good number of the items are, I apprehend, mere adjustments. Thus, for example, the sum of £90,100, entered as a decrease in the allowances payable to village officers in the Bombay Presidency, is, I apprehend, due to an alteration in the manner of bringing these charges to account. Then, the reduction of £198,000 in military charges appears to be due, either to the estimates having been wrongly framed in the first instance, or else to outlay on account of the purchase of stores having been postponed. It really is impossible to arrive at any clear understanding from the gross entries in these statements. I should like to know, for example, the several items that constitute the sum of £82,200 under Administration. On the whole, I am willing to give my hon'ble friend credit for having done his best to be economical; and I am willing to believe that if, on the one hand, no actual sa' ngs have been effected, no considerable increase of expenditure has been incurred. And here I may remark that I believe the much-abused income-tax has practically effected much indirect good by checking extravagance. The Government are, as a rule, not likely to receive much support in their efforts towards retrenchment and economy from those

classes of the community who direct public opinion in this country; but it is surprising how virtuous all connected with the administration become when they know that increased expenditure may render it necessary to increase the burthens of the small but influential body of income-tax payers.

"As regards the estimates for 1872-73, I shall only remark that they are characterized by that extreme caution which has marked the financial administration of my hon'ble friend, and which has resulted, during the last two years, in surpluses, respectively, of 1½ and 2¾ millions. I cannot help feeling that the Financial Department has gone to the extreme of control. Opium is, of course, the difficulty in their estimates; and I am not going to be presumptuous enough to state that my hon'ble friend is wrong in estimating for a nett decrease of 2¼ millions, namely, 1½ under receipts, and ¾ under expenditure. Speaking with very imperfect knowledge of the subject, it does seem that, as the average price last year was Rs. 1,338, a higher figure than Rs. 1,200 might have been taken. It would have been satisfactory to have had some detailed explanations as to the items composing the increase in expenditure of £56,500 under Land-Revenue; of £10,600 under Administration; of £56,100 in minor Departments; of £70,700 under Law and Justice, and of £44,000 under Political Agencies. A good number of these are, I dare say, accounted for by adjustments, as I see the charges under the head Miscellaneous are entered at £119,300 less than those of the past year. It would nevertheless be satisfactory if my hon'ble friend would furnish a detailed statement of all *bonâ fide* increases of charge. I think if such a statement were annually published it would be satisfactory to the Council, and might not be altogether inoperative as a check against extravagance.

"As regards the question of the cash balances, it seems to me the Council are entitled to some more lucid explanation than that which my hon'ble friend has given. As far as I can understand the explanation of the surplus—seven millions—it is this:—

"2 millions are due to the closing balance being better.

"2½ millions to positive and direct increased prosperity.

"2 millions to the extraordinary expenditure having been less than was anticipated.

"¾ of a million held in deposit in India on account of money received for bills purchased by the Secretary of State in England which have to be paid for in India.

"I think the Government of India ought to furnish the Council and the public with a plain and simple statement of their assets and liabilities, and I think we should be told the minimum sum that prudence demands should be kept in hand to meet the ordinary current expenditure, the sum which, I suppose, a private firm or company would describe as working capital. If this were done, and liabilities—such as sums held on account of money borrowed for extraordinary works, and on account of deficits payable on demand—were clearly distinguished, then I think the existing mystery would, in a great measure, be solved, and the public would know what they are far from knowing at present, namely, the exact financial position of the Government. Till this is clearly placed before them, it will be impossible for them to know whether the burden of taxation to which they are subjected is or is not in excess of the exigencies of the State."

The Hon'ble MR. ROBINSON said:—"My Lord, I have resolved to vote against passing this Bill to revive the dead income-tax in any form. I will do so because there is nothing whatever in the state of the finances of India which can in any way justify its revival and continuation, in order to maintain the credit or to fortify the position of the exchequer; and because the proved condition of the balance-sheet of the State finances and of the treasury condemns in the most absolute manner the legislation of the past year in this

respect. I will vote against this Bill because I think that in the very prosperous state of the finances and of the country the Government is pledged to withdraw this emergent tax—imposed as it was for the definite purpose of restoring an equilibrium which was attained two years ago, and of removing a deficit which no longer exists—and because the proceeds of the tax have gone to swell undue cash balances, or are being applied to purposes which were not contemplated by the Legislature when it sanctioned this emergent impost—such as liquidating past deficits, paying for public works extraordinary, improving the position of bank-shareholders, financing in loans to municipalities, and the like. I shall vote against this Bill because a general income-tax is inequitable and unjust as respects all incomes derived from land and rents in this country, and because I believe that an income-tax, which is theoretically defensible as respects incomes derived from public funds, professions, mercantile pursuits, and the like, cannot be administered in this country in anything like an efficient, fair, or inoppressive manner. I shall vote against the Bill because I believe that the income-tax has proved financially, morally, and politically a serious failure, because its enforcement is lowering the tone and impairing the good influences of the public services, because it is almost universally condemned by experienced official and inofficial public opinion, and is repellant to our Native fellow subjects.

"Now, my Lord, it is not easy to discuss efficiently a subject of this kind in the absence of the papers which it has pleased your Lordship to withhold, and I do not wonder that our hon'ble colleague shrinks from examination under that sore light. Further, I think that the interval of a week—a week sorely burdened with other important legislation—or ten days, has been insufficient for the examination of so extensive a matter. Why, a reply could not be had by return of post from Madras within the time.

"I will venture, *in limine*, to recall to the memory of the Council the hard things which were said, and wrong motives which were imputed to me and others of my colleagues who ventured to advise this Council against continuing the income-tax last year, but I do so merely to enable me to disavow honestly and conscientiously every unworthy motive or influence in respect to any remarks I may now venture to offer for the consideration of this Council.

"The first question which I would ask is—will this Council endorse by, deliberately reviving special and emergent direct taxation, the astonishing assertion that the revenues of India fail to evince a safe elasticity? Why, my Lord, just twelve years ago, Mr. Wilson was dealing with an income of £37 millions only, and our hon'ble colleague has had an average income of 50 millions during the last three years. We dare not, my Lord, deliberately belie the economic facts of a country whose income evinces an elasticity almost without precedent anywhere.

"My Lord, the facts disclosed by the statement to which we listened on the 6th instant prove, I think, beyond cavil, that there was nothing in the state of the finances of India during the past year which can justify the hon'ble member in having come to this Council for a law to continue an emergent and obnoxious taxation during the year that has closed. These facts likewise conclusively show that there is nothing in the prospects of the future to justify an appeal to the legislature to revive or continue this emergent legislation and taxation. The single plea for imposing or maintaining an income-tax from year to year has been that the budget of income fell short, or threatened to fall short, of the expenditure of the year. This plea was, in fact, in a great measure, lacking in the year 1870-71. It was absolutely wanting in 1871-72; and its application to the circumstances of the year before us, is, I feel, utterly indefensible.

"The upshot of the financial year 1870-71 was a surplus of 1½ millions, the whole of which was derived from the income-tax—which having been inconsiderately dealt with in the previous year, was needlessly maintained at undue

rates in 1870-71. The proceeds of the income-tax in that year were 2 millions, and fully account for the surplus now proved to have existed throughout in that year. I will not go through the debits and credits of the budget-statements for 1870-71: suffice it to say that the hon'ble member failed to present the budget of income for that year within anything like its fair proportions—proportions which might very fairly have been estimated with reasonable exactness—and that *even* unbudgetted expenditure was more than met by the revenue realised—the balance being a large surplus derived, as I have remarked, from undue emergent taxation alone.

"I now come to the budget-statements of 1871-72, and the taxation which has been kept up during the past year, in consequence of the very unsatisfactory representation of the financial prospects of the year made by our hon'ble colleague.

"I earnestly warned this Council, when the discussion of the Income-Tax Bill took place last year, that the budget of income had been seriously underestimated, that the prospective needs of the public service were overstated, and that the whole budget of expenditure was disfigured by evidence of relaxed economy. I therefore conscientiously argued—in vain, I regret to think—that a continuance of the income-tax, with those inherent evils which I and others endeavoured but too feebly to describe, could not be justified. Results have verified anticipations far beyond my confident hope—the obvious deductions which I ventured to make from an examination of the budget-statements.

"The regular estimate of 1870-71 had shown an income of 51 millions (£51,048,900)—an amount which has been exceeded by the actuals. Yet the budget-estimate of income of 1871-72 was taken by the hon'ble member at 49 millions (£49,098,900)—a sum which the regular estimate for the same year (£49,976,500) now shows to have been practically an under-estimate of well-nigh one million on the income side of the account alone.

"When we come to the expenditure side of 1871-72, we find a budget-estimate for ordinary expenditure of 49½ millions (£49,500,000), while the regular estimate now shows that 47½ millions (£47,276,500) was what was really required to carry on the State services, and this outlay include such "windfalls" as the unbudgetted Looshai expedition, the Delhi camp of exercise, &c., &c. The actual result arrived at by an under-estimate of income and an over-estimate of expenditure is a surplus which will not fall short of 2¾ millions, and may possibly, when all actuals are brought to account, reach near on 3 millions. Of this enormous surplus considerably more than a clear ¾ of a million (£824,600) accrued from the income-tax alone. Now, I ask, have these results justified the legislation of last year, or ratified the pleas under which it was instituted?

"And yet our hon'ble colleague again comes before this Council with the conclusively negatived assertion that he cannot make ends meet without reviving this obnoxious, but dead, emergent impost.

"I must withhold my confidence from the hon'ble gentleman's statement, and decline to be guided in my vote by one whose assurances have been so signally belied by results. And I do not think that this Council can again fairly endorse the only plea for reviving the income-tax, and enforce on the people the wrong conclusions which our hon'ble colleague asks us to accept. I therefore earnestly urge this Council to spare the people from a bootless revival of a tax by which, I confidently assert, they have been needlessly plagued during the past year through overweaning confidence in our hon'ble colleague's guidance; and I beg this Council not to endorse, with legislative approval, the under-estimate of income and over-estimate of expenditure which have characterised the statements of past years, nor a state of cash balances for which there is no conceivable justification.

"I think that our hon'ble colleague is wrong when he tells us that such 'actual surpluses cannot be justly held to invalidate the policy of those special

measures of taxation which were resorted to in that year;' on the contrary, I say that they conclusively condemn alike the system followed by him in framing his budgets, and his propriety of asking the legislature to legalise special and emergent taxation both then and now.

"Our hon'ble colleague seems to hold that it is right to secure surpluses in this manner to counterbalance, as he states, the deficits of years past. In other words, he is asking this Council to revive this needless and vexatious taxation to recoup deficits of three or four years back—in fact, to pay off debts Now, I ask, is it the deliberate intention of this Council to tax the people anew for such objects, under the plea of raising money to meet shortcomings which have no existence whatever?

"I now come to the budget-statement which the hon'ble member submits for the coming year, on the faith of which he asks this Council to revive the income-tax. As already shown, a surplus of well nigh 3 millions accrued in the year that is past. The actuals of 1870-71 show the State income to have been 51½ millions (£51,413,685), including 2 millions of income-tax. The regular estimate of the year just closed shows that its income will not fall short of 50 millions (£49,976,000); and yet the hon'ble member asks this Council to accept a budget of income for the year before us of 48¾ millions only (£48,771,000), or 2¾ millions (£2,742,685) below the actuals of 1870-71, and 1¼ million (£1,205,500) below even the unadjusted regular estimate of the year that is closed. I confidently reject this estimate in the present state of the country and its finances and of the cash balances.

"On the side of expenditure for the ordinary State services, the hon'ble member shows a budget-estimate of 48½ millions (£48,534,000) for the year which is before us. Now, the military and the civil services of the country were fully and economically met during the year that has closed by an expenditure of 47¼ millions (£47,276,500), including the unbudgetted expenses of the Looshai expedition, the Delhi camp of exercise, &c., &c. It seems to me utterly unreasonable to ask the Council to accept such a budget at such a time, and with it the penalty of reviving the income-tax against the country. What is there, I ask, in our prospects which could justify an increased expenditure of 1¼ million over last year?

"As the result of this prospective financing operation, a small balance of £237,000 is elicited in favour of the exchequer. But the budget of income includes £570,000 as the expected proceeds of the income-tax proposed to be revived under the bill before the Council. So it is made to appear that if the Council reject this bill, there will be an apparent deficit of £333,000, utterly unreal and fabulous—as I believe—which cannot be overcome without reviving this miserable and contentious impost.

"In short, my Lord, I cannot accept the budget-statements before us as affording any justification for last year's legislation, or for reviving or enforcing exceptional and emergent taxation at this time—taxation which is in so many respects thoroughly objectionable, and in the eyes of the people odious and repulsive.

"I must now venture to trouble this Council with some remarks on the details of the budget of revenue and receipts for 1872-73.

"*Forests.*—I view, my Lord, an increase of the revenue under forests with serious jealousy and apprehension. I know not what may be taking place in the Forest Department in other parts of the country, but I confidently affirm that much—and I believe in general just—irritation is at this moment caused throughout South India amongst the rural populations in consequence of progressive and inconsiderate foreclosure, if not practical confiscation, of communal property and rights by the Forest Department, by invasion of immemorial easements and privileges, by the enforcement of licenses and revenual charges for State, not communal, purposes; by interference with village woodlands and pasture, and with the supply of fuel and manure, &c., &c., and by the disposal of firewood,

in respect of which the people probably have claims, to what are practically for the present State railways, at prices for which the drain could not be replaced. The burden of these things on an agrarian population is not easily estimated, but it is great and searching. I hope the changes which have been proposed by the Madras Government may place these popular and very important interests in safer hands than they have been for some time past, and that legislation in the local Council, where the rights of the people are known, and their interests are represented, may lead to a wholesome political condition in these respects. The regulation of popular and communal rights, and the conservancy of woodlands in the interest of the country and of the people, are needed; but the thing must be done in a very different spirit from that which has prevailed hitherto. These things are not beside the subject before this Council, when the question is the needless revival of another cause of popular irritation.

"*Excise on spirits.*—I doubt also the sufficiency of the budget-estimate under excise. Allowing for the transfer of receipts for opium retailed in India, I find that our hon'ble colleague has budgetted, as appears to me, for an absolutely stationary condition of this head of revenue, if we compare the budget-estimate for 1872-73 with the regular estimate of 1871-72 and with actuals of 1870-71. The state of the country does not justify this, and I think that following the safe precedent of realized revenue in a former year, the budget-estimate of 1872-73 might safely be bettered by £10,000 or £12,000.

"*Customs.*—The next thing which I think deserves notice is customs. The actuals of 1869-70 were under 2½ millions (£2,429,000), and in 1870-71 exceeded £2,610,000, showing thus a steady and vigorous increase. The budget-estimate of 2½ millions for 1870-71 has been more than sustained by the regular estimate (notwithstanding the adverse circumstances of the year), and I think that instead of showing good grounds for the loss and stationary estimate adopted for the year which is before us, our hon'ble colleague has presented facts which justify confident expectation that the customs revenue of 1872-73 will, at all events, touch the actual of 1870-71 namely, £2,610,789. The difference would add £40,000 to the budget.

"I am glad to find that no argument has been preferred by our hon'ble colleague in support of reviving the dead income-tax, on the ground of relieving the transit duties on sugar, &c., in the North-West Provinces, or the export duties on rice in Bengal and Burma; but the thing has been alluded to in this spirit. Both duties are of course thoroughly bad as a part of our imperial fiscal system, but the claim of neither entitles them to tax the incomes of all India for their respective relief.

"I do not know much about the sugar duties in the North-West Provinces, but their indirect practical effect is of course to raise the cost of production of the article so taxed, and they may fairly enough be described as a *quasi* land-tax on the soil producing the commodity. Now, considering that the assessment on landed income and the land-tax of the North-West Provinces has recently been, or is now in course of being, very largely enhanced by a revision of settlements, it is sufficiently clear that these exceptional burdens on the land should at once be merged in that operation, and be removed altogether, in consideration of the largely increased revenue which is being obtained from an enhancement of the land-tax. At all events, the question is a local one, and has no right to consideration with reference to a general income-tax.

"As regards the rice duties in Bengal and Burma, I suppose I may at once assume that these are likewise in their incidence very much of the same nature as an additional land-tax on rice-producing land. Now, these export duties are paid almost exclusively in Bengal and Burma. I cannot say, and suppose no one can tell me, what is the average acreable land-tax on rice-land in Bengal, but no doubt it is moderate. I have, however, under my hand what enables me to calculate the average rate of assessment per acre on rice-land in Burma. It amounts to about Rs. 1-10 per acre. The rice-duties levied in that country, if transposed into an additional tax on the land on rice-lands, would raise this burden to about Rs. 2-12 per acre. Now, the

average land-tax on rice-lands (excluding rice duties from consideration) in Madras is between Rs. 5 and Rs. 6 per acre, and I believe that in Bombay—I speak under correction—the average acreable rate is even higher. I need not therefore tell this Council that it would simply be preposterous to go on levying an income-tax on the people of all India generally, in order to relieve Burmese land of a comparatively light assessment, or to further relieve the still more lightly assessed rice-land of Bengal.

"*Salt.*—Sir Richard Temple has treated very lightly on the subject of salt. I observe that in 1869-70 the actual revenue was close on 6 millions (£5,889,000) and few branches of revenue were more elastic than this was up to that date. In 1870-71 there was a slight increase (£6,106,000) in revenue. The regular estimate (£5,996,200) of the year 1871-72 shows a slight decline last year, and the Hon'ble Member has now estimated for an absolutely stationary condition during the year that is before us. Now, I think that I am justified in asking the Hon'ble Member whether there are any grounds for inferring that this very unhappy result does not arise from the measures taken two years ago for greatly increasing the burden of this heavy demand on the incomes of the poor and labouring classes of the country? The imperial income has just been maintained, and no more, since the change; but the people have had much less of this necessary of life. If this be so, the financial policy of the past is emphatically to be condemned. The salt manufacture of Bengal has been transferred to Cheshire. Has this proved a wise policy?

"I have been much struck by reading the sagacious resistance of Lord Lawrence's Government to any increase of this very serious tax on the incomes, comfort and health of the poor; and I venture to remind the Council that these are all matters which require their serious consideration while weighing the question before us, namely, that of reviving the income-tax.

"*Opium.*—I venture to think that the opium-estimate for the year is likewise too low. The opium revenue has been shown by Finance Ministers who have preceded our hon'ble colleague to be an *abnormal* but by no means *precarious* or uncertain source of revenue; and the result of my enquiry about Bengal opium alone shows that, with the exception of one unfavourable year, the prices realised during the last five years have been very far in excess of the budget-estimates of their respective years. In fact, the average price of the last five years is nearly Rs. 100 per chest in excess of what our hon'ble colleague has assumed in the budget for this year. Now, judging by results and the recent official reports from China, I venture to think that our hon'ble colleague has erred in repeating the oft-refuted mysteries about danger to this head of revenue, and that the year's estimate, which is nearly Rs. 200 per chest below the actuals of the last year, is assumed at an unnecessarily low rate for a time when the grave question before the Council is whether the people should be relieved from objectionable emergent taxation or not. The addition of Rs. 50 to the price of each chest would almost wipe out even the imaginary appearance of a deficit which, it is said, might be created by the rejection of this Bill. Fanciful caution is out of place here.

Year.	Price assumed in Budget.			Price realized.			Difference.	
	No. of chests.	Average per chest.	Gross income.	No. of chests.	Average per chest.	Gross income.	Average (cols. 3 & 6).	Gross (cols. 4 & 7).
1	2	3	4	5	6	7	8	9
1867-68	47,250	1,150	5,43,37,500	47,999	1,332	6,39,27,309	+ 182	+ 95,89,809
1868-69	48,000	1,250	6,00,00,000	47,235	1,376	6,50,21,769	+ 126	+ 50,21,769
1869-70	43,680	1,330	5,80,94,400	45,680	1,200	5,47,82,625	— 100	— 33,11,775
1870-71	49,000	975	4,77,75,000	49,030	1,121	5,49,89,179	+ 146	+ 72,14,179
1871-72	52,470	1,075	5,64,04,000	49,695	1,390	6,89,75,308	+ 315	+ 1,25,71,308
1872-73	44,175	1,200	5,30,10,000	...	...	...	...	...

"*Stamps.*—I would next ask why, when the sources of revenue have been greatly increased by recent legislation, the stamp revenue fell off in the past year by £14,000 as compared with the actuals of the preceding year (£2,510,316), and why this head of revenue appears in the budget of next year at the lower and declining figure of £2,500,000 ? If this be a real and not merely an apparent falling off, the state of the country in no way whatever justifies such a very unsatisfactory and suspicious condition. These facts suggest to me that either our hon'ble colleague may, in his caution, have largely under-estimated our financial prospects, or that there is real truth in the oft-asserted and thereby much strengthened allegation, that the very largely increased burden imposed on the country, and especially on the land, by the stamp-laws recently revised with most vexatious enhancements, and by the Court Fees Act, is too great for the people to bear, and that good rights are being abandoned all over the country because their vindication is beyond the resources of the wronged. Either inference must be unsatisfactory, and I hope that the hon'ble financial member will be able to give some more satisfactory explanation of facts and things than the light historical sketch we listened to on the 6th instant. I have carefully perused former debates, and have been making enquiries about this matter, and am told that the cost of litigation, in respect to land at all events, has increased by several folds under the legislation of late years. A carefully drawn comparative memorandum which I hold in my hand shows that the increase may be as much as five to six folds above the cost of some years back. I speak under correction, but I think, however, that the incidence of this increased taxation will require very early investigation, and that the Council should not pass a taxation bill until such things are fully before them.

"*Public Works—Irrigation.*—The only other item of revenue on which I would venture to make a remark is that derived under the head of Public Works—Irrigation.

"The actual revenue derived from this source in 1869-70 was £535,000; that in 1870-71, £485,500 ; and the regular estimate of the year just closed shows a decreasing revenue of £476,600. Thus we have a steadily falling revenue during three years. The budget-estimate for 1872-73 is still below the actuals of 1869-70 and of 1870-71. No wonder that the Hon'ble Sir Richard Temple remarked that 'such fallings off, notwithstanding the heavy expenditure of capital on these works, is not satisfactory.' I admit that I entertain great apprehension from the information accorded last year, that the Government of India are pledged to borrow some 50 millions to be spent in this manner, and I ask where the interest is to come from ? I only trust that His Grace the Secretary of State's prohibition against laying on compulsory general 'guarantee taxation' will not be offended against, and that this is not one of the objects for desiring to maintain needless emergent taxation like the income-tax.

"On the whole, my Lord, I am thoroughly satisfied that no good ground whatever exists—considering the very prosperous condition of the country and the state of the cash balances—for estimating the income of the year which is before us at $48\frac{3}{4}$ millions (£48,771,000) when the average of the actuals of the last three years (including 1871-72) is $50\frac{3}{4}$ millions (£50,767,088). We must not, I am sure, estimate for a declining revenue when every indication justifies the reverse prospect. I cannot vote for a Bill to raise the income-tax under assurances which neither fact nor fair inference justifies. Nor do I feel that we are right in endeavouring to justify in this manner, in the eyes of the tax-payers, a policy of withholding relief at such a time from an impost which can only be said to be reasonable under very serious financial difficulties.

"I will now venture to make some remarks on the expenditure side of the budget before us. In my remarks on the budget of expenditure for the last year, I noticed that the proposed additional outlay under a number of heads of civil services gave cause to fear a serious relaxation of economy; and I ventured to indicate a variety of heads under which, by persistent frugality in administration, that equilibrium which should enable the Government of

India to dispense with the income-tax even last year would have been secured. I am rejoiced to find that not only was the increased expenditure budgetted for last year not, on the whole, necessary, but that the economies enforced during the year that is past have far exceeded my most sanguine hopes; for, irrespective of decrease of expenditure under the head of opium of nearly half a million, the difference between the budget-estimate of expenditure under other heads and the regular estimate shows a saving of well nigh a million of money. Now, I think that this fact reflects the highest credit on the administration of the expenditure by our hon'ble colleague during the year that is past.

"But I must demur absolutely to the following assertion of our hon'ble colleague, namely, 'that these deductions are largely, if not wholly, derived from real savings of various sorts all over the country, apparently small if reckoned singly, but making up a considerable aggregate when taken collectively.' The apparent reductions are, on the contrary, in the main, I believe, attributable to over-estimate and want of sufficient foresight in retrenching budgetted expenditure. I regret to think that these errors of estimate were not sooner checked, for they went to make plausible (if they could not justify) the taxation which, as I held last year, and still believe, was being again needlessly and unwisely forced on the people.

"I think that this Council must be fully sensible of the justice of the remarks made by the Hon'ble Member in respect to the military expenditure of the year, for the budget-estimate has not been exceeded, although the Looshai campaign has been carried to a successful and honourable issue at a cost of £200,000, and the expenses of the Camp of Exercise (£40,000) have been defrayed—in all about ¼ of a million of unbudgetted expenditure—within the budget for the military services of the year that is past. No instance of a more satisfactory result is probably on record. The military budget of the ensuing year is likewise moderate.

"I trust that His Excellency the Commander-in-Chief will not think it out of place in me to remark that the branch of Her Majesty's service which he so honourably commands is in no way responsible for the special emergent taxation of which he estimates the evils, and spares the necessity of the past or coming year. The defence of the empire and the efficiency of our armies needed no special tax last year, and call for none in the one that is before us. These things are due to the civil services and their budgets alone.

"When we come to the budget-estimate of expenditure under Civil Services, we find it breaking out all over with increased expenditure. There are 25 heads of Civil Services, and in 22 of these an increase of expenditure has been admitted and budgetted for, at a total addition of upwards of 1¼ million over the ample expenditure of the year which has closed. This obvious relaxation of economy, while special emergent taxation is plaguing the country, deserves the gravest remark. And I do not think that the Council ought to be satisfied that any sufficient reason whatever has been shown for this want of economy, or that we can fairly be asked to revive emergent taxation while objections so patent stand on the face of estimates which are put forward as a justification for such legislation.

"Upwards of £700,000—a sum which more than absorbs the whole of the estimated receipts for the income-tax for the year—appears in the budget as proposed to be laid out for the extension of the opium industry. Thus, this obnoxious tax is proposed to be kept on for a purpose absolutely alien to it, and at a time when nearly 2¼ millions have actually accrued within the last two years, mainly under the head of opium, and the cash balances amounted to 24 millions.

"My Lord, if anything like the same economy be observed in the ensuing year which marked the year that has closed, the half million of money that is sought to be raised by reviving the dead income-tax never can be needed. If it be persisted in, the tax-payers will assuredly infer from its revival—in the face

of 2¾ millions surplus and enormous cash balances—that the Government of India are not minded to grant the relief they need, and are determined to spend up to any income that may be raised from them, from whatever source derived, and under whatever plea imposed.

"There is only one individual item of this expenditure to which I would draw special attention with reference to the remarks made on the subject of local taxation in the financial statement and the discussion which followed on the exposition. It is the transfer of £51,800 to Provincial Services.

"The glossy and fragmentary character of the remarks of our hon'ble colleague on the subject of local taxation were, I think, very unsatisfactory. I can only tell this Council that facts and things important beyond all compare with what the Hon'ble Member calls 'the expression of satisfaction on the part of local authorities,' are involved in these things. Local taxation has been stimulated far beyond what the Hon'ble Member wished us to understand in his exposition, and can be carried, under the laws recently passed, far beyond what has occurred in this, the first year. The matter has, indeed, a side which is absolutely the reverse of what the Hon'ble Member sketched. The Hon'ble Member has probably no complete knowledge of these things, and his heart is light about them; but I can tell him and this Council, that the people of the town and rural districts alike are dissatisfied under the increased burden of taxation which has been laid upon them by the recent financial policy of the Government.

"The Hon'ble Member has not yet communicated to the Council the total of these burdens. His attempts to sum them up in his budget statement was fragmentary and incomplete, and I believe that there is nothing more important than that this great matter should be fully before the Council before any Bill for special imperial taxation is passed. No income-tax legislation should be revived until this matter is thoroughly before the Legislature.

"I venture here to recall to the memory of the Council an incident which occurred in the debate on the passing of the Panjáb Municipalities Bill. The Hon'ble Mr. Stephen, in animadverting on the conduct of certain Members of this Council, observed that the prosperity of about 300 towns in the Panjáb was imperilled by the delay occasioned in making that measure permanent. Now, my Lord, I know with almost absolute certainty that there are not 300 cities in that province which are fit objects for municipal administration, town duties, octroi and other municipal taxes. I feel a strong impression that the local authorities may be driving, under this specious name, special 'city-taxation' among rural and possibly village communities, in the teeth of Lord Lawrence's assurance that such should not be the case, in the debate of 1857. The thing requires the careful examination of the Legislature and Government. Judging from the returns from some parts of Bombay, I believe that there, too, local authorities are in the same boat. Now, my Lord, you are aware that in Madras, with one-third more area and population than there is in the Panjáb, we have only been able to find 45 towns to which taxation of this character can with any reason be extended. Is it then to be wondered that some of us entertain a very anxious feeling in regard to taxation which has been thrown off in relief of the imperial finances, and saddled with increasing stringency and weight on local Governments and their populations? And I hope that this Council will give deep consideration to this thing before they admit the revival of harassing special and emergent taxation for imperial purposes. My Lord, I listened to the Hon'ble Member's statements, which treated so cheerfully, but so incompletely of these things, with much misgiving.

"As connected with this matter, I think that the Government was, to a certain extent, pledged to abandon at least a part of this branch of taxation when the financial policy of last year was inaugurated. The Hon'ble Mr. Laing was specially struck in 1861 by the absence of local taxation and the dependance on the Central Government which characterised Indian adminis-

tration, and he first mooted the transfer of certain sources of taxation—amongst them the income-tax—with certain branches of administration, to local Governments and their populations.

"The thing was further noticed from time to time between then and 1867, when Lord Lawrence's Government imposed the license-tax, which was in fact a part of this 'income-tax in disguise.' In the debate on that tax, the Hon'ble Mr. Massey said: 'I must add that the Government, without giving a definite pledge, does not propose that this tax should form a permanent source of imperial revenue. During the first year the duties will be collected and credited like any other tax, but, in our opinion, a tax of this nature is better suited to local purposes than to the general purposes of the State. We intend therefore in another year to transfer it—modified, if experience should suggest such modifications, together with the corresponding amount of charges of a local character—to the several Governments and their administration.'

"The charges he here alluded to have been transferred with very inadequate assignments from the general fix, and the Governments have been told, in the words of Mr. Laing in 1862,—'Take what we are able to give you, and for the residue take certain powers of local taxation and raise it for yourselves.' But this branch of the imperial income-tax has not disappeared under the pledge then given, and several local Governments are at this present moment, I believe, raising a second income-tax on the same incomes for those local purposes which Lord Lawrence's Government then contemplated.

"I am inclined indeed to agree with the views expressed by His Honour the Lieutenant-Governor—as I gathered them from what fell from him last year at this time—namely that if an income-tax, in the only form in which it can be tolerated, namely on incomes other than those derived from land, can succeed at all, it might do so as a local tax administered by Local Boards and Local Governments. And in this form it might be tried. Indeed, I am inclined to believe that His Honour is right in surmising that these taxes are local taxes in their nature; for the immemorial income-taxes of Madras—the Martafa and Vessabuddi—were originally a local *kávali*, or watch-and-ward taxes, and of a purely local character.

"But this is not the question here. There can be no doubt that as an imperial tax, an income-tax in every form has proved, and must continue to prove, a failure and a blunder, and ought to be abrogated.

"My Lord, I will not weary this Council by quoting the numerous assurances and statements of former Finance Ministers and others of a distinct and authoritative kind as to the temporary and emergent character of the income-tax. They are to be met with all through the debates and public correspondences which have taken place from time to time on this branch of taxation—assurances on which doubtless former Legislatures have relied, and from which the tax-payers throughout the empire have assuredly and reasonably inferred a pledge that the income-tax shall not be continued beyond the time when real and urgent financial necessity for it exists.

"This time has fully passed, and I partake in the conviction that we are bound to abandon it forthwith. To my mind an endeavour to evade or explain away this emergent and conditional character of the income-tax is to endeavour to deny the facts, the history, and the recorded evidence of our financial policy ever since the Right Hon'ble Mr. Wilson's time. I must vote in accordance with this my belief and faith—the faith which I feel assured is the faith of the whole country.

"I repudiate the argument that if we relinquish the income-tax now, we cannot again resort to direct taxation or tap this 'great reserve' in case of emergency. I do not think that this is the case, but be this as it may, we are bound by present obligations. Nor do I believe in the policy of keeping open a needless blister in order that we may at a more convenient time apply to the same a still severer stimulant. Let us keep faith with the country now, and

when emergency again arises—if ever—let the subject be carefully and frankly dealt with on its merits. It will be again loyally accepted by the people when its need is established.

"This is the more important, as what fell from the Hon'ble Mr. Ellis in the debate of the 6th instant will, I think, be read in the country as indicating that a covert intention to make the tax permanent is really at the bottom of this attempt to revive the income-tax at this time.

"But, my Lord, the main objection to the revival of the late income-tax lies in the fact that it was inequitable and unfair as regards incomes derived from land. I alluded to this objection last year, and must solicit a fuller hearing now.

"Incomes and profits derived from landed property and cultivation already pay an exceedingly heavy burden of taxation throughout India—a tax more or less equal to from 30 per cent. to 60 per cent. of the whole rental or nett yield, and often more—in fact, one $\frac{1}{3}$ to $\frac{2}{3}$ of the whole property of these persons is under *quasi*-sequestration to public uses. There is, therefore, no parity in the condition of property or of incomes in this country, as there is in England, which can justify an equal demand for income-tax against all alike, including the landed interests, simply because it is right or is desired to reach the incomes of fund-holders, merchants, bankers, and professional men, or the profits of various industries, which are not directly connected with the land, and do not happen to contribute to the public exchequer.

This, of course, is not the place for the discussion of the principles and conditions of property, or the incidence of taxation in this country. Still the fact remains that its landed classes do already contribute very largely and most unequally to the wants of the State; and that they are subject to what may be termed a peculiar law of imperial taxation applicable to themselves and their incomes. They cannot, therefore, with fairness be taxed over again on the same incomes, on equal terms with those who now pay nothing to the State. Nor is this the place for the discussion of the great weight or the inequality of the existing burdens on the rent-roll of the country in many parts of the Empire. Suffice it to say, that both these existing considerations constitute very serious and aggravated objections against including these classes in a general income-tax. There can be no doubt that the long-continued poverty of the agricultural classes, that the persistent backwardness and slow development which have on the whole characterised the people of India, notwithstanding its genial climate, prolific soil, and industrious peasantry, are in the main due to an exorbitant demand of the State on the land, and to the sore gripe which the imperial tax-gatherer has long held on the very vitals of national wealth. But we inherited these evil conditions from extortionate predecessors, and have never, perhaps, been able to afford to repent. So things must stand now. But we can eschew, on behalf of these heavily-burdened classes, the grave errors and obvious injustice with which the dead income-tax was fraught. We can now let past wrongs sleep, and do right for the future.

"Now the reiterated wrongs of the past ten years in respect to landed incomes have been inflicted by our Financiers alone—for Indian economic science and usage has never erred here. These have clearly recognised the peculiar and exceptional position of landed property and income in India in respect to taxation.

"In the well known programme of the sources from which revenue may be drawn under the immemorial law and usage of India, which Mr. Wilson drew up, the double income-tax on the landed interests finds no place. That right hon'ble gentleman justly said that that Bill of Fare was indeed 'enough for the most needy exchequer, and for the most voracious minister,' a Bill of Fare which suggested to him the idea that (to use his own words)—'the Revenue Laws of the ancient Hindús must have been contributed to the sacred compiler (Menú) by some very needy Finance Minister of the day—'

still not so greedy as to tax twice the same source! But to return to the programme, it is therein stated that 'the revenue consists of a share of grain, and of all other agricultural produce.' * * * 'The following are the rates of taxation on grain:—one-twelfth, one-eighth, one-sixth, according to the soil and labor necessary to cultivate it. This may also be raised as far as one-fourth in cases of emergency.' The other landed resources of the State, enumerated in that programme, are escheats and royalties only. No imperial right to tax the agricultural incomes over again, or to assume the rights of a great landowner of the soil, are assented to by the ancient law or immemorial usage of the country. So much for the tax on land and landed incomes.

"In quite a separate category are shown taxes on commerce and trades, and on the incomes of mercantile and professional classes, manufacturers and the like, and the rates at which these taxes may be demanded, namely, two per cent. of the income.

"There is no confusion here, my Lord, about the sources of revenue. No uncertain sound about the claims of the State on the different classes of its subjects and their property.

"How far, and at one time how cruelly, our demand on the land has transgressed, in most parts of India, the ancient law and usage of the country, is not the subject before us. But it belongs to it to state that, in South India at least, we have recognized in the main these immemorial laws and usages, and have practically ratified these principles of taxation. The heavily-taxed owners and cultivators of the soil have enjoyed both under Native and British rule immunity from those other general State taxes which have been enforced against non-agricultural classes and industries, and they have enjoyed a variety of agrarian privileges and immunities as regards sites for houses, supplies of wood, fuel, &c., services of village servants and the like, which were not accorded to non-agricultural classes. These facts, and others taken in the aggregate, indicate conclusively that the State has recognized that it has no further claim against these landed classes for general Imperial purposes. Let us not again transgress on those rights and obviously reasonable immunities.

"Mr. Wilson, it is true, committed in the first few months of his career the error of confounding the sources of revenue and classes of persons who might fairly be subjected to an income-tax. He was hungry and in sore distress. But his error was recognized and it was allowed to pass away. And succeeding Financiers and Governments declined to continue or respect it.

"Lord Lawrence's Government absolutely refused, though earnestly pressed, to do that unfair thing again in 1867 and in 1868.

"Mr. Massey said in the debate of 1867,—'that it was idle to discuss the question whether the land-holder contributes his just proportion to the needs of the State." They already paid, he held, very largely, and could not be included in the rough income-tax (the license-tax), which Lord Lawrence's Government assented to re-impose in that year on non-agricultural classes and other industries alone.

"So recently as 1868, Lord Lawrence again firmly refused to add to the burdens of those who live by the land; and in the debate on the certificate-tax made the following pregnant remarks:—'It cannot be denied,' he said, 'that the burdens which that class bore were very high, and in fact were undeniably greater than any other class had to bear. There is no doubt,' he said, 'that the land-tax is very large; in fact, the burden in former days in many provinces was so great that it seriously impeded the improvement of the country by preventing the cultivation of the soil and the investment of capital in land. He (Lord Lawrence) could well recollect the day when in the Upper Provinces, in Madras, and all over India, except Bengal, our land-tax was so high that it had a most serious effect on the progress of the country and the condition of the people. That day had passed by, but nevertheless it was undeniable that even now the land revenue bore a very large proportion to the rent.' Lord

Lawrence's words but feebly describe what I have myself witnessed in South India.

Mr. Massey, in the same debate, maintained that a general income-tax could not be imposed on the land-holders in India, because that class, he said, already pays largely. 'It is merely,' he added, 'a war of words to say that the land-tax is rent. The fact remains that land-holders, whose title is indefensible so long as they pay the tax, contribute 20 millions a year to our revenue. 'It may be,' he added, 'that the land-tax is not sufficient; that those who pay it, at least under the Bengal settlement, have made a very good bargain. But it is a bargain, and we are bound by it.'

"There is an honest ring about these words of Lord Lawrence's Government. And they appear to me to dispose of the partial and local plea—curious enough it seems to be—put forward for the income-tax, namely, that it has at least the virtue of catching the Bengal zámindárs and taxing them, in consideration of the comparatively easy terms on which they pay land revenue. Even if this plea were sound as respects Bengal, it cannot justify such a tax being enforced where the 'Bengal settlement' does not obtain, *viz.*, in four-fifths of the whole Empire. Of course Lord Lawrence's and Mr. Massey's remarks had no reference to *quasi*-county-rates for local purposes; neither has the argument for which I am endeavouring to obtain a hearing.

"In short, Lord Lawrence's Government would not hear of any general income-tax which should include the already heavily-taxed landed incomes of the community. Were that sagacious and discriminating statesman amongst us this day, we should not, I think, be discussing the propriety of reviving this needless and dead income-tax against the heavily-taxed landed interests of the country, at a time when the revenue is in surplus and cash balances very large.

"We are happily again in that position, in regard to this part of the tax, in which Lord Lawrence left us. The income-tax is dead. Let it lie, and let us refuse to endorse the errors of the past, which he condemned, but which the Bill seeks to revive.

"It is a very significant and scarce credible fact that I find, in endeavouring to analyse the incidence of this branch of the late income-tax, that the Account Department are absolutely ignorant alike of the amount of the taxation raised by this double tax on landed incomes, and of the number of assessees enrolled on the Collectors' books.

"I should guess that one-third to one-half of the whole amount has been collected from the incomes of land-holders. But I fear that no fairly accurate conjecture can be made as to the number of those who pay the tax on incomes wholly or in part derived from land. But it is not a few who are offended against in this respect, and I fear, my Lord, that truth and the reality of things will, in many instances, multiply Sir Richard Temple's units in this respect by tens, if not by several hundreds. The land-holders of India are, there is too much reason to believe, passing down their emergent burdens and obligations to their tenants and poor cultivators with the usual aggravations and additions. The rich are here again preying on the poor and the laboring classes, and, under the cover of this detested impost, the poorest of the community are probably liquidating no insignificant part of a demand which our hon'ble colleague tells us he has always meant only for those who are in easy circumstances. You cannot prevent this, my Lord; you cannot protect your poor cultivators of the soil from the evils which are inherent in this form of taxation.

"But this is not all, my Lord! As already observed, the incomes and rent-rolls of the land-holders of the whole country are subjected to a special rule of taxation of their own. And we are at this moment acting all over India on our right to take by taxation a largely enhanced portion of the rent of the land or of the nett produce. We are now very generally re-assessing, or have very recently re-assessed, the tax on rents and on the land, with a serious

enhancement of the demand throughout the country, save in Bengal. We are at this moment adding very largely to the direct burdens of the country, under the special conditions which apply to the land and incomes derived therefrom; there is no doubt that the demand on the land and on landed incomes is now being quite sufficiently raised in this manner already. If we now revive the dead income-tax, we shall be adding to taxation with both hands. We shall be reducing the incomes from land by re-assessments under the land revenue rules, with the one hand; and in addition we shall be imposing a further tax on this attenuated rent-roll by an income-tax with the other hand.

"This is not the place to enter into the consideration of the policy of thus keeping open or exciting what must sooner or later lead us up to our 'Land question' with the people of India, nor is this the time for canvassing the effect of thus absorbing a much larger share of that improving rent-roll of the country, on which its prosperity and advancement depend in so very serious a degree—a prosperity which needless taxation greatly impairs. Nor can we here consider the consequence of periodically causing general agrarian anxiety and uncertainty, of throwing back the advancing market value of the whole landed property of this country, and of from time to time imperilling (if not wiping out) the investment of the people's savings in the purchase or improvement of their land. But all these things are well worthy of deep consideration when the question before us is the justice and policy of reviving a tax on incomes which are being so seriously affected by the facts to which I have alluded.

Suffice it to say that in Madras, at all events, we are altering by a settlement which was commenced with a view to reduction and relief, and district by district, the more or less permanent and very heavy demand which has underlain, for the last three quarters of a century, the value of all land as a means of subsistence and an object for the investment of capital. This has been done, as Your Lordship knows, with great consideration by our Revenue Officers in respect to the few districts to which the new settlements have been extended. But the tide has turned, and we are now altering the value of every acre more or less to the disadvantage of its anxious owners, and of the value of the land in the market. And the percentage added to the demand is simply changing the worth of (probably annihilating) all the investments of years, which have been made in this, almost the only object in which an agricultural population invest their savings. Can it be wondered that the people ask for rest and are anxious? Will this Council again assent to lay on, on the top of all this, the unfair and needless impost which I am earnestly pleading against?

"In Oude, in the North-Western Provinces, in the Panjáb, everywhere, the same process is going on or has been effected, with the same disadvantageous effects on the incomes of the landed interests, and on the value of the land. And rents are now taxed, or are soon to be taxed, at from twenty per cent. to fifty per cent. in advance of the demand which the land has hitherto borne.

"In Bombay the same has been done, or is in the course of being done.

"Why, my Lord, you have a suit pending there before the High Court of Bombay, from the facts of which I gather that all the ancient settlements which have subsisted for more than four centuries in the proprietary district of Canara are being set aside in favour of a revision of the land-tax in South Canara—settlements which in the eyes of the people at all events, and perhaps of the Madras authorities under whom the district was until 1861, have had all the sanctity of an ancient permanence which was more or less ratified to them by our early settlements in the beginning of the century, and again fifty years ago by the settlement locally known by the name of the Tharao settlement. A very great increase in the demand is apparently being laid on the incomes of the land-owners of that Province, for, from the circumstances of the case I allude to, it appears that the increased demand has much more than doubled the ancient land-tax, and the owners' incomes are reduced in that proportion. Can we lay on a

revived income-tax on the burdened rent rolls of the land-holders of districts which are being brought under enhancements of this kind? These operations of the Bombay Government carry a very serious menace against all the long customary settlement of the west coast of India, and deserve the serious consideration of the Madras Government and of the Government of India.

"In short, I maintain that a special and sufficiently exacting rule of assessment and of imperial taxation is applicable to the land-tax, and this assessment of taxation on the rents and incomes of land-holders of this country, and we must confine ourselves to that rule and principle, and must not inaugurate a new and inapplicable system of double taxation.

"I need scarcely say, my Lord, that I know the argument advanced in favour of the double imposition which I am contending against, namely, for the income-tax on landed incomes plus the enhancements of land revenue which I have endeavoured so fully to describe, on the ground that the land revenue of India is not taxation but rent in the European sense of that word. I have read such assertions as that the land of India is universally 'Crown-land,' and that its Native proprietary are mere 'Crown-tenants' of the State. I may cite the ideas and use the words of Professor Fawcett, the apostle of this doctrine. That school apparently holds that we are here as conquerors who have acquired the actual ownership of the soil from our predecessors by the right of the sword, and that our Indian subjects are mere 'tenants who pay rent for permission to cultivate the soil; that the State exercises over it (the soil) the same rights of property as an English landlord exercises over his own estate. That the Government of India takes the place of individual landlords, and the cultivators of the soil rent their land from Government instead of from private land-holders.' In fact this school holds that India is at our feet, devoid of rights or property; that no property in the land whatever appertains to its people, and that they who till their native soil are the agricultural serfs of the State.

"I believe, my Lord, that these sentiments are absolutely at variance with the constitutional conditions and the agricultural history of this country, are at variance with the truth and real facts of the people's agrarian institutions and rights, and are utterly repellant to the just, sound, and conciliatory policy which has built up this Empire.

"The agricultural laws and usages of this country are, I believe, absolutely saturated with the principle of popular proprietary right—Oriental indeed in its character and incidents, yet ancient, real, and fondly cherished. In practice, our treatment of these rights has not been at variance with this immemorial condition, and our policy has in general tended to comfort these conditions. They are, of course, quite consistent with the demand of a moderate and fair contribution from the land-owners and their property, towards the needs of the State, as recognised by the immemorial law of the country.

"No, my Lord, the appropriated and agricultural land of South India at least is not, and never has been, as a rule, 'Crown-land.' The proprietary right of the State in any actual soil has been limited to escheats and unclaimed waste.

"The right which the State has possessed is that of imposing, what in practice became an unlimited amount of fiscal burdens; and our predecessors exercised that right too often to the extinction of the value of the land and practical destruction of the owner's rights. But there was, as a rule, in South India at least, no confiscation. Lord Lawrence's words inadequately pourtray what has occurred in our times in many parts of India. Happily improved prices have now relieved the land. May we not again exceed.

"The theory is, I believe, 'a mere war of words,' as was said by Mr. Massey, a mere confusion of ideas, and I should not have ventured to trouble this Council with any remarks on this matter had this thing not been used here, in my hearing, for the disheartening purpose of removing altogether from the list of India's burdens, the liberal and increasing contributions to imperial needs of over pounds 20 millions sterling now paid by the land-owners and peasant proprietary

of India. Had it not been used in order to justify an assertion which I conscientiously believe to be an error, namely, that, instead of having been amongst the most heavily-burdened of people, our Indian subjects are the most lightly-taxed of any country under civilised Government, and that therefore the income-tax on landed incomes is justifiable, and is in fact the only form in which the landed interests are now made to contribute anything to the public exchequer.

"I dissent absolutely from this view of the matter. In many parts of the Continent, the land-tax forms, as it does here, a larger proportion of the public revenue; but this fact has never been used in support of the confiscatory doctrine which I am venturing to repudiate. The proprietary are not tenancy.

"No, my Lord, the native soil of India is the property of its rural population, and the very heavy contributions derived from the land and its proprietors are in the strictest sense of the word direct taxation in its most drastic and searching form. It is heavy enough.

"The very essence of our settlements is to ascertain the rental, or net profit of cultivation, and then to take, in *the* form of direct taxation fifty per cent. of that income as public revenue. Our Land Revenue Collector exercises no one of the functions which would belong to the agent of a great State landlord. He cannot collect the rent-roll, oust a single occupant, or change a single tenure. He cannot succeed to, transfer, sell, appropriate, nor interfere with the ownership of a single acre of appropriated land. He cannot dictate a rotation of crops or meddle with the cultivation of the soil in any way. These incidences of property belong to the Native proprietary. The State can only tax; and it has used that right, with most stringent severity, in times now happily past, and still its hand is not light. Even when default is made in respect to the limited claim of the State on the land, the Collector can only realize the demand by the sale of his debtor's property, moveable or immoveable, and by the incarceration of the defaulter, in the same manner as any other ordinary creditor. In short, the land revenue is, I hold, heavy direct taxation, and not rent, and we cannot fairly tax—with periodical enhancement—the rent-rolls of the country by double direct taxation under a land revenue rule and also by an imperial income-tax, such as that which has expired.

"But, my Lord, while I hold that an income-tax, levied on already very heavily-taxed incomes derived from land, is unjust, and that therein the analogy of England in no way holds good in India, I freely avow that a tax on incomes derived from other property and from taxable industries is a fair and equitable impost, if the emergent necessities of the State justify recourse to a form of taxation which is, in all lands, so unfair in its incidence from moral and other causes; and is so odious, from its inquisitorial and arbitrary character, to every people of every clime and nationality.

"I fully recognize the principle of this form of direct taxation, but as a practical question I cannot advocate an imperial tax of this character for India. I have had lengthened experience of the administration of such taxation from its existence in certain forms in the Madras Presidency during the first twenty years of my acquaintance with that part of India; and I have extensively studied its working and its effects during the last twelve years under a variety of enactments, and I consider that taxes on such incomes are eminently unsuccessful as imperial taxes. Still what is practically an income-tax on moveable property, profits, and various industries has had a prominent place in Oriental Economic Science in all times. Among the sources of revenue enumerated in Mr. Wilson's programme of Indian taxable sources already quoted, we find 'taxes on commerce, and a very small annual imposition on petty traders and shop-keepers' * * * 'Merchants are to be taxed, it is added, 'on consideration of the prime cost of their commodities, the expense of their travelling and their nett profits,' and so on; and again, quoting from the words of the late Sir Walter Elliott, we read 'it (an income-tax) is an

ancient tax declared to be legitimate in old Hindú books, and the verse (in Menú) which restricts the land tax to one-sixth of the produce, and declares two per cent. or one-fiftieth to be the proper tax on the profits of trade, and that a mere trifle should be taken from meaner persons who subsist by traffic.' There is, therefore, no doubt that taxes on such incomes are sanctioned by ancient Hindú law and usage. The *Mortupha* and *Vesabuddy* taxes of the Madras Presidency are immemorial examples of this law and usage, and it appears from the reports of the late Hon'ble Mr. Mountstuart Elphinstone (cited at page 564 of the same debate), and other information carefully collated by Mr. Wilson, that taxation of this character has found a place in the fiscal system throughout India. Every argument, therefore, that can be advanced in support of an income-tax of this limited character, prevails in respect to an income-tax on moveable property, mercantile profits, and industries and the like in this country.

"But there can be no question that every moral and practical objection and difficulty which finds place in Europe, America and elsewhere, in respect to the enforcement of a tax on incomes derived from such sources, is erroneously exaggerated, is far more insuperable in this country than anywhere else. Nowhere does graver truth and weight attach to the careful summing up of the practical and moral obstacles to its enforcement which Mr. John Stuart Mill, himself an advocate for such direct taxation, has recorded in the following pregnant paragraph of his great work.—'It is,' he says, 'to be feared, therefore, that the fairness which belongs to the principle of an income-tax cannot be made to attach to it in practice; and that the tax, while apparently the most just of all modes of raising a revenue, is in effect more unjust than many others which are *primâ facie* more objectionable. This condition would lead me to concur in the opinion which, until of late, has usually prevailed that direct taxes on incomes should be reserved as an extraordinary resource for great national emergency in which the necessity of a large additional revenue overrules all objections.'

This, my Lord, is I believe specially and absolutely true of India. These views are confirmed by the opinions of more than one of our Finance Ministers, and of many experienced and hon'ble gentlemen who have sat in this Council, and I think that the opinion of the majority of officials who are competent to form a sound judgment, together with the consensus of all public opinion outside, is that an imperial income-tax of this kind has at all times proved financially a failure, morally an evil, and politically a blunder in this country. It was so with the Mortupha and Vesabuddy taxes in the Madras Presidency, and other instances might be cited. But new financiers will not believe that the thing has been tried over and over again in vain. I can assure your Lordship that nothing which has occurred, or which has been said or written about the income-tax of these latter days, can exceed in condemnatory force the facts which had occurred and truths which had been recorded in respect to our endeavours to carry out the old native income-taxes of South India in days gone bye. It all applies to the tax under consideration, and the conclusions are strengthened and vindicated by the story of its administration.

"My Lord, an income-tax of the kind which I admit to be just, has failed ever since we held the country, at all events ever since we attempted to rule it without resort to native practices and fiscal torture. Our late income-tax has fared no better, and it was really only administered, even lamely, by the steady application of that moral torture, that fiscal thumb-screw—arbitrary surcharge. As it seems to me, the mere facts that we are forced to adopt what is a very high rate of income for this country, as the minimum below which we scarcely dare carry our assessments, and that we are forced to attach to its administration the impossible condition that none below the rank of a Tahsildar or Deputy Collector shall be employed in rating incomes and profits, are pregnant proofs of failure and inherent difficulties.

"As I said last year, I am perfectly willing myself to pay an income-tax at a much higher percentage than I did under the dead law; and I believe that every European in the country would be equally loyal, did he see the necessity. But I do not believe that it is possible to raise anything like a true percentage on the incomes of natives of this country which are derived from these sources, or to administer the tax with any sort of efficiency or certainty, and without resort to most objectionable practices in order to ascertain profits and estimate incomes. While a door for great and almost irrepressible irregularity on all sides is set wide open by the attempt thus to reach results which at best can only be insignificant and dearly bought.

"I think that it is proved beyond doubt that the income-tax is driving the people of the country into sullen antagonism with, and suspicious alienation from, the Government and its officers. Those practices for the concealment of property are reviving which were rife under Native Government, but were disappearing before a more enlightened administration when this income-tax policy was unhappily inaugurated. Even respectable and educated classes are again satisfied to put up with bad accommodation, different clothing and the outward feints of poverty. While on the other hand, falsification of accounts, bribery, corruption and evasion are resorted to in a manner which it would have been worth ten times the proceeds of the tax to avoid.

"My Lord, I cannot conceive how this Council can require or expect any one to administer effectively or well in this country a tax which (under schedule D) is, we know, very largely abused and evaded, even in England, which is repudiated by financiers in France, condemned by financiers in America, and by many of the best judges, wherever it is known, condemned for those very reasons, moral, political and social, which must even wreck such taxation in this country.

"My Lord, facts have proved beyond cavil that we cannot do so. Railing and disheartening imputations against hard-worked and honest servants of the State of all grades will not better things, for the evils are inherent and absolutely inseparable from imposts of this kind, tried wherever they may be.

"One further remark and I have done. I have been equally astonished by the excitement which has been caused by the honest hometruths told in the Council by my friend, the Hon'ble Mr. Inglis, and others last year, and by our hon'ble colleague's (Sir R. Temple's) wilful reluctance to believe us and the host of testimony which has transpired, although your Excellency has not been pleased to give us access to all the papers. Nothing has been said, which has not been repeated over and over again by those who have best known the country, from its earliest time to its latest. In this Council the late Sir Henry Harington, in words quite as strong as my hon'ble friend's, Sir Bartle Frere and various others, have borne like testimony. And were I to dare to endorse the assurances which the Hon'ble Sir Richard Temple has ventured now to offer to this Council, in respect to the removal of abuses, I should simply belie what the political, social and fiscal history of India teaches us in these matters, namely, that the strong will prey on the weak, and that the most respectable will resort to corruption and evasion under fiscal imposts of this character.

"My Lord, I cannot accept the Hon'ble Sir Richard Temple's strange assurances. I do not believe in the possibility of removing the exaggerated forms of the abuses which are inherent in taxation of this character, and I will, therefore, vote against reviving the condemned and dead thing in any form whatever."

The Hon'ble MR. INGLIS said:—"MY LORD,—I shall vote against this Bill. I do so because I am convinced that the imposition of an income-tax this year is altogether unnecessary. The only semblance of an excuse that can be urged in favour of the measure on financial grounds is the small deficit shewn in the budget estimate prepared by the Hon'ble Sir R. Temple for the current year. Now, I think that our experience of the hon'ble gentleman's past budgets would fully justify us, were we to determine to leave this small

deficit to be provided for at the close of the year, if it had not by that time disappeared of itself, as it most probably will have done. In 1870-71, the hon'ble gentleman estimated for a deficit and put on an income-tax to meet it. The result was a surplus of over 1½ millions. In 1871-72, he again estimated for a deficit and again put on the income-tax to meet it. The result is a surplus of over 2½ millions. He now comes before us for the third time with a small deficit, which he proposes to meet in the old way. I think that our knowledge of the hon'ble gentleman's tendency to under-estimate his receipts in past years warrants the conclusion that he has again fallen into the same mistake; and that this year, ushered in like its predecessors with a small deficit, will like them close with a goodly surplus; but even if it were thought inexpedient to rely on this expectation, and to leave the small deficit to take care of itself, I think it would have been better, with the cash balances standing at 24 millions, or more than double the amount Mr. Wilson thought necessary, to have charged the deficit to the surplus of past years, rather than to provide for it by the re-imposition of this mischievous tax; for I deny that its re-imposition this year, when it is not wanted, will in any degree remove the difficulties in the way of making it a permanent source of income, should this ever be considered desirable; any more than its abandonment now would have added to these difficulties.

"The Hon'ble Mr. Chapman was good enough just now to draw my particular attention to an extract he read from a letter from the Lieutenant-Governor of the North-Western Provinces, and to suggest that I should give the opinion therein expressed my very serious consideration before voting on the Bill now before us. I am happy to be able to inform the hon'ble gentleman that I saw the letter he refers to some time ago, and that I have given it very careful consideration. He will pardon me, however, if I say that I fail to perceive how the opinion expressed by Sir William Muir supports the position he has taken up. Sir William Muir says that, if *money must be had*, he would not object to raising it by an income-tax fenced in by restrictions and conditions far more stringent than any that have as yet been adopted. Now, the hon'ble gentleman throughout his whole speech has carefully explained to us that he does not vote for an income-tax this year because he considers it financially necessary; in other words, because *money must be had;* but he tells us that he votes for the tax because its re-imposition this year is in accordance with some crotchets he entertains on the subject of direct taxation. I can see no connection between this opinion and that expressed by Sir William Muir.

"I do not intend to say much to-day on the bribery and corruption, the extortion and oppression which have been so generally charged against the tax; it seems unnecessary to do, as all that has been urged against the tax on this score has been fully corroborated by the reports made public during the year, and would, I am convinced, receive further confirmation were the papers asked for by the Hon'ble Mr. Bullen Smith produced, as I have no doubt they will be, should the hon'ble gentleman at the head of the Financial Department ever ask leave to introduce into this Council a Bill to make the tax permanent. I wish to say, however, that I deny that the change in the limit of taxable incomes from Rs. 750 to 1,000 will do away with bribery and corruption. I readily allow that this alteration will relieve a large number of the poorer classes from much suffering, and that the opportunities for oppression and extortion will be considerably diminished, but I am certain that whatever be the limit fixed, bribery and corruption will always accompany the levy of this tax in India.

"I say this from my own personal knowledge of how utterly impossible it is for any District Officer to make the assessments to the tax without relying on information obtained through the lower classes of Native officials, who alone possess the requisite local knowledge. It would really seem as if some people thought that the District Officers could tell a man's income by merely looking

at him. Unfortunately they do not possess this faculty, and are compelled to rely on information obtained from Native officials and others in the first place the lists of persons liable to assessment can only be prepared after local inquiry carried on through the lower classes of Native officials, now local inquiry by Natives as to who is, and who is not, to pay income-tax is merely another name for bribery and corruption: and, further when these lists have been made out, the District Officer must fall back upon information obtained from the same sources to enable him to estimate the individual income of the persons liable to the tax; for it must be remembered that the assessments are rarely made on the returns given in. If this were the case, the estimate of the probable yield of the tax framed by the hon'ble gentleman at the head of the Financial Department would have to be very considerably reduced; to what extent this surcharging has gone lately it is impossible to say, as no returns on this point have been called for, but the statements submitted with the reports on Mr. Wilson's tax shewed that of every 100 persons assessed to the tax only three were assessed in accordance with their returns; while the amount surcharged was nearly 300 per cent. above the amount of the income stated in the returns given in.

"To shew the difficulties the District Officers have to contend against when assessing their Districts to this tax, I will read a few extracts from reports of officers who have taken considerable interest in the matter.

"The Collector of Cawnpur says:—

'The District Officer must of necessity, in the first instance, employ his tahsildars to prepare the assessment lists, and the latter must get his information as he best can; his only available source is the village patwari, *who as a rule will only include those who have not paid him to omit their names.* The tahsildar always, provided he has been resident any time, will of course have his local knowledge to fall back upon, and he will be able in a measure by local investigation to find out whether the patwari has entered the names of men *not* liable to assessment; but as to finding out those who are liable, but have been omitted, if he did little else during the whole year, he would not discover 30 per cent. of them, so determined are all to conceal the incomes of one another. I apprehend, then, even the most acute and energetic Assistant and Deputy Collector when on tour, which, on account of his other equally pressing duties, must necessarily be short, can do little more than remit unfair assessments, flooded as he is sure to be by appeals, if he goes into the sub-division at the time of assessment and with every one bent upon misleading him.

'To put this in a stronger light, we will take the case of a tahsildar in charge of an average sub-division in the Doab containing about 300 villages, an area of 260 square miles, and a population of 130,000. His local knowledge must indeed be great, if he is in a position to state accurately how many people there are whose incomes exceed Rs. 500 per annum; and if this is, as I hold, nearly impossible for him, how much more so for the Assistant Collector, who probably has not been connected with the District one quarter the time the tahsildar has, and perhaps hardly at all with the sub-division over the assessment of which he presides.

'I have already enlarged on the difficulty of obtaining information, and I only now want to draw the attention of the Government to the fact that *ab initio* the Collector's work is guess work, founded on information more or less trustworthy. This guess work, when put to the test of appeal, resolves itself into certainty only when documents are produced. When, however, as is most frequently the case, there is no documentary evidence, the Collector has to defend his guess work by simply disbelieving the evidence of the appellants' friends—undoubtedly a very unsatisfactory dilemma for the Collector, and one which certainly goes far to make the work distasteful.'

"The Collector of Azimgarh says:—

'The more I see of the working of the income-tax year by year the more I feel convinced of the utter hopelessness of expecting to ascertain with any degree of accuracy what a Native's income is. It is a subject upon which Natives are very averse to interrogation, and on which they are prepared to deceive the assessor as far as lies in their power, while at the same time there really are in most instances no reliable means of ascertaining the truth.'

"The Collector of Ghazipur says:—

'I may here mention that, as it seems to me, a fallacy lurks in the opinion which has been expressed that because the actual percentage of tax-payers to the population is not large, that the tax is not unpopular. In this district the tax is disliked not only by the persons who ultimately pay it, but also by those who, after assessment, obtain remission at last with considerable trouble, and also by those men who are never actually assessed, but who expend considerable sums in

fees to pargana and village accountants, and other subordinate officials to save themselves from being mentioned to the tahsildar or Collector for entry in the assessment rolls.'

"The Collector of Mynpurie says :—

'It will not probably be saying anything the Board do not know already when I remark that the tax is a very unpopular one. Europeans are more or less accustomed to it, but Natives have a peculiar dislike to all direct taxation, and especially to a tax of this description which is not universal, but falls on some, while others, but slightly differing in means, escape. The inevitable and immediate result of all inquiry, with a view to the administration of the law, is an unblushing course of deception by those coming within its operation. There are honourable exceptions of course, but the rule is what I have stated, and evasion and deception, with a view to escape, is not considered dishonourable in any way to those who practise it.

'In such light is the tax regarded that influential and thoroughly respectable persons draw back from rendering any assistance to the assessing officers, unless great pressure is brought to bear, on account of the odium that attaches to those who are considered to betray their friends by giving information regarding their means.'

"The Officiating Collector of Allahabad says :—

'The utter absence of any trustworthy data on which to estimate the income of a petty trader who keeps no accounts, and the all but impossibility of obtaining any information about his business and his habits except from his enemies, render the proper assessment of this tax, in the majority of instances, simply impossible. In many instances, no doubt, a fair estimate of income is arrived at, but there must be numerous cases in which it is very far from correct.'

"The Collector of Goruckpúr says :—

'It is possible for a very painstaking tahsildar, possessed of some conscience and a great deal of *prestige* in his jurisdiction, so to keep his patwaris in hand that gross *relative* mis-assessments be not made—*i. e.*, that if Loutun, banian, has (reputedly) three times or four times the income of certain others, say, Roushun, and Pubbaroo, and Seetul Pershad, then that Loutun shall be assessed, say, twice or thrice higher than the three others, and not less than them (as constantly happens where the patwari is *not* looked after).

'Much more accuracy than this I do *not* believe in. Any amount of figures can be cooked up by a wealthy mahajun, and a *rechauffé* can be made thereof by a Collector or Deputy Collector.

'Few officers, I imagine, have any faith in such figures. For my own part, I candidly confess I have none whatever in nine cases out of ten where *buhes* are produced, and in the tenth there is generally some fundamental omission which vitiates all deductions.

'It comes, then, to this: that the tax is of the nature of a '*benevolence*' or '*aid*,' and that the Collector is the almost irresponsible estimater and fixer of the quota which each man has to pay.'

"These extracts show very clearly the difficulties that beset District Officers when making assessments to this tax; the worthlessness of the implements they are compelled to use, and how impossible it is for them, few in number as they are, to prevent the bribery and corruption that goes on.

"But over and above this bribery and corruption, which the District Officers are powerless to prevent, there are many other very serious and grave objections to the tax, which would remain unaffected by any alteration in the taxable limit, or any change in the time of year the assessments are made, and which would not be removed by making the tax a permanent one.

"It seems to me that latterly we have fixed our attention rather too exclusively on the bribery and corruption, the oppression and extortion that are inseparable from this tax, and that, consequently, we have allowed other evils attendant on its imposition, grave and important though they are, to drop in some degree out of sight. I shall therefore notice a few of these. I shall do so very briefly, as I have no desire to weary the Council, or to protract unnecessarily this already lengthy debate.

"First of all, then, the tax is, from its inquisitorial character, the form of taxation most disliked and detested by the Natives of this country. They all dislike, with an intensity we have no conception of, to make known the amount or the sources of their incomes, while the inquiries that have to be made on these points are most distasteful to them. The existence of this feeling is so well known, and the impolicy and danger of running counter to

it is so thoroughly understood by all Native Rulers, that there is no instance on record of any Native Government having resorted to a general income-tax, although they have at one time or another imposed almost every other conceivable form of taxation on their subjects.

"I think, my Lord, that this general and strong feeling of dislike to this form of taxation on the part of the people of this country, about which there is no doubt, and which I have never heard the most thorough-going advocate of the tax attempt to deny, is of itself a sufficient and unanswerable argument against the imposition of the tax by a Government situated as ours is.

"Again, the assessments to the tax are in this country pure guess work from first to last,—guess work based on information which is known to be worthless. The argument that an income-tax falls with equal pressure on all who come within its scope,—that by it, persons who would not otherwise contribute towards the cost of the Government under whose protection they live, are made to pay a fair and equal proportion of their incomes whatever may be its worth—and I have not much opinion of it myself—applies in this country only to fund-holders, and to persons holding appointments the salaries of which are known. The assessments on the mass of the people are pure guess work and can be reduced to no fixed percentage on incomes whatever. They are based on estimates made by the District Officers of the amount of individual incomes from such information as they can collect, but are made on no reliable data whatever simply because it is impossible to get any. The tax consequently falls heavily on some; lightly on others; while some get off altogether; but very few others actually pay one per cent. on their real incomes; the tax is really what it was styled in the extract I read out from the report of the Collector of Goruckpúr, a 'benevolence' or 'aid' extorted from the people. It has no pretension whatever in this country to be called an income-tax in the meaning usually attached to those words.

"Again, the imposition of this tax on the interest of the Government debt is regarded by every Native throughout the country as a direct breach of faith on the part of Government. Over and over again when the tax was first put on, Natives came to me with their Government notes, saying—'look here, in this paper the Government distinctly promises to pay me Rs. 50 a year for every Rs. 1,000 they have borrowed of me. I send my note to the Treasury and get only Rs. 48. How do I know that next year something more may not be cut, and eventually they may perhaps pay me nothing at all'. Our credit in this country has thus been very seriously damaged by this tax. I have no doubt that the Hon'ble Sir Richard Temple will presently tell the Council that the price of the Government Securities was never so high as it is at present, and that this fact is scarcely compatible with a damaged credit. I reply to this that the prices now ruling are solely due to investments in England, and do not in any way affect the truth of what I have just said. I find from a statement I obtained from the Financial Department, that of the whole debt due by India only 16 millions are held by Natives of this country, while of this sum only $3\frac{1}{2}$ millions are held by Natives out of the three Presidency towns; if we deduct from this $3\frac{1}{2}$ millions the sums invested by Native Princes, some of whom pride themselves on lending money to the Government, and the sums invested by persons who are obliged to give security in Government paper for the due performance of contracts or for the proper discharge of the duties of offices held by them, the balance in the hands of the general public will be found to be very small, and small as it is, the amount is, I believe, diminishing every day. Lord Macaulay in one of his essays boasts that such was the confidence felt in former days by the people of this country in the good faith of the Company, that the Government had only to open their treasuries throughout the country, with the promise of a small rate of interest, to obtain any amount of money they wanted, while the Native Princes were unable to obtain a rupee on loan from their subjects, although they offered fabulous rates of interest. If he were writing now, he would have to modify these

expressions very considerably, for I believe that if a loan were now opened in India and confined to Natives, the amount of subscriptions offered would be very trifling. I charge the income-tax with this.

"Lastly, the income-tax has brought about a most unfortunate change in the relations hitherto existing between the district officers and the people. Formerly the district officer was looked upon as the friend of all, the man to whom all might go for assistance and advice, whose advent, when out on tour in the cold weather, was everywhere welcomed: all this is changing now: the District Officer is beginning to be looked upon as the common foe, as the tax-gatherer whom all should shun, and to whom no information should be given that can by any possibility be withheld; in short, as the Amil or the Chakladar of a Native Government was regarded; with reference to this, I will read extracts from the following reports:—

"The Officiating Collector of Saharunpur says:—

'But there never was such unsatisfactory work as the assessment of an income-tax in India. I have, in my former reports, expressed my opinion freely against the tax, and the more I see of it, the more convinced I am of its unsuitability to this country and of the impossibility of assessing it justly. It is a tax which has been truly described as 'odious to the people and to the officers who have to assess it.' It is not only a mistake financially, but it is a mistake politically: it keeps up discontent and irritation among the people; it is demoralizing to the subordinate officials who assist us in assessing it, &c.; worst, perhaps, of all, it weakens our administration and lessens our power for doing good, by undermining and destroying the influence of our District Officers. The same people who many years ago used to crowd round and delight to talk to a District Officer when he visited their villages, now distrust him and fly from him because he is a tax-collector. A District Officer can hardly ask a question from a Native now without exciting the suspicion that he is trying to worm out some information about his or his neighbour's income. It is our duty unfortunately, as servants of Government, to assess this tax. But still it is also our duty to protest as loudly as we can against it—to point out the evils attending it—in the hope that some day the Supreme Government may listen to us, and may be convinced that the tax is not one which is suited to India.'

"The Officiating Commissioner of the Meerut Division says:—

'The Collector's remark regarding the unpopularity of the tax and of its injurious influence in tampering with the loyalty of the people, is only an echo of the opinion of every District Officer with whom I have spoken on the subject. There cannot be a shadow of a doubt as to the truth of Mr. Jenkinson's remarks, and I would observe that no one is in a better position to pronounce on such a subject than a District Officer who is constantly in intercourse with the people of his district.

'It is not fair to discredit the unpopularity of the tax, simply because the provisions of the Act are carried out. The people see the utter uselessness of opposition, and District Officers feel their own helplessness. The position of the District Officer is rendered a most odious one, and the affection and good will of the people are alienated. It would be hard to sum up the indirect evil thus caused by the estrangement between the governed and the rulers, but it is an estrangement which creates many difficulties, not only in ordinary intercourse, but also in the collection of information on any new subject.'

"I believe that what is said in these extracts will be confirmed by every District Officer who has been in the habit of associating freely with the people; they all feel the change and lament it.

"To illustrate my meaning I will give two instances, out of dozens that I might quote, that have occurred lately.

"When Lord Mayo went up country last year the stud stallions were called in at one of the stations he stopped at to be shown to him. The zamíndárs in whose charge they were came in wretchedly dressed. The Stud Officer told them that they were about to see the Viceroy, and that they ought therefore to come in their best clothes. They replied, 'yes, we know that, but the Collector Sahib will be present too, and if we dress ourselves well, he is certain to put us down for the income-tax.'

"A Deputy Commissioner in one of the Non-Regulation Provinces a short time ago, when on his cold weather tour, came to a town celebrated in that part of the country for its manufactures of brass utensils. The main bazar is one long line of workshops, where, as the natives say, 'the sound of the hammer

is heard day and night': this is one of the sights of those parts. Accordingly, the Deputy Commissioner said he would ride down and see the people at work. When he got to the town, he found every shop closed, and all work stopped. On asking the cause of this, he found that a report had got about that he was coming to make some inquiries relating to the income-tax. Accordingly, they thought the best way to treat him was to act as they had been accustomed to do towards the Chakladar under the native rule, and shut up their shops.

"Now, when we recollect that in the Mofussil the District Officer is in the eyes of the people the representative of the British Government—in fact the British Government itself—this change in their feelings towards him indicates matter for very serious thought, on which, however, I will not enlarge now.

"I affirm, then, my Lord, without fear of contradiction, that this tax is of all forms of taxation that can be devised the one most disliked and detested by the people of this country; that its assessment is everywhere attended by bribery and corruption, and, when the limit is low, by extortion and oppression, as well; that the assessments when made are pure guess work; that it has caused widespread discontent and disaffection; that it has seriously damaged our credit in this country; and that it has brought about a change in the feelings of the people towards the District Officer which is fraught with evil consequences.

"I have no doubt that I shall be told presently by the Hon'ble Mr. Ellis, as he has told me on one or two occasions previously, that of the evils I have charged against the tax some are imaginary; others are too highly coloured; while those that do exist are mainly owing to mal-administration on the part of the officers charged with the assessment of the tax. Now, I would assure your Lordship that these are grievous mistakes. I believe that it would be impossible to describe in too strong terms the dislike felt by the people to this tax—to over-estimate the evil effects that have resulted from its imposition—or to expose fully the bribery and corruption that have everywhere throughout India attended its assessment. I affirm that this bribery and corruption goes on and will go on in spite of the strenuous efforts of the District Officer to prevent them, and that there is no remedy for this as long as the tax has to be assessed by a few English officers on the vast population of this country. I maintain that if the District Officers had not been men, unsurpassed by the members of any service in the world for their devotion and zeal in the discharge of their duties, and for their unsparing self-sacrifice in their efforts to protect the people from extortion and wrong, that the difficulties which have attended the assessment and collection of this tax would have been far greater than they have been, the discontent engendered by it would have been more general, and the bribery and corruption far worse.

"We impose an impossible task on our officers when we order them to assess this tax, and tell them at the same time to prevent the bribery and corruption which are inseparable from its assessment in this country, and when they fail, as fail they must, it is unfair to attribute this failure to any neglect or supineness on their parts."

His Honour THE LIEUTENANT-GOVERNOR said that he did not mean to commit himself one way or another as to the question of an income-tax. When the Bill was introduced, he had given his reason for assenting to it on the present occasion, and he would not now go beyond that. He had listened with much interest to the speech of his hon'ble friend, Mr. Inglis, and he was quite sure that the objections to an income-tax could not have been put in a better way than that in which they had been put forward by his hon'ble friend in one of the very best speeches which HIS HONOUR had had the good fortune to listen to in this or any other Council. It appeared to HIS HONOUR, however, that there was a great deal to be said upon both sides of this question. There was not the slightest doubt that the tax was in a great degree open to most of the

objections which Mr. Inglis had so forcibly put before the Council. There must always be inequalities in the assessment of an income-tax, and in this country it was especially so. If the tax was to be retained, HIS HONOUR was inclined to think that we ought considerably to alter its form. He had before expressed the opinion that the tax fell unfairly upon Europeans, and he thought there should be a distinction between property and income; still some tax on the rich was much wanted. Allusion had been made to the salt system of India; he thought he might say that, in his opinion, the evils of the income-tax would be counterbalanced if it gave us the means of putting the salt-tax upon a complete and satisfactory footing. And altogether he was inclined to believe that if we gave up the income-tax, we must find some other tax in its place. The opportunity had lately been afforded to the Local Governments to make experiments in taxation. It was perfectly true, as his hon'ble friend, Mr. Robinson, and others had told the Council, that, in some parts of India, the Government had raised considerable sums by means of local taxation. That taxation had principally taken the shape of an extra cess upon the land. HIS HONOUR believed that there had been also a sort of poll-tax on the non-agricultural population in the Bombay Presidency, which he understood had not been very successful. He thought that was the only new tax tried in any part of India. We had not been successful in finding new modes of taxation. It seemed to him that, when the expenses were increasing from the growing wants of civilization and the diminishing value of money, somehow or other we must find the means of meeting that expenditure; and if we pursued the plan lately in vogue of limiting the land-revenue, we must find some other means of meeting the growing expenditure where the revenue did not grow in proportion.

HIS HONOUR might more especially illustrate the matter by referring to the provinces which were under his administration, where the tax upon the land was fixed for ever. In those provinces it was indisputable that the land-revenue was now reduced to what he might almost call a small quit-rent. It seemed clear that, if we were to improve the mode of government by introducing expensive modern systems, we must find other modes of taxation. He was inclined to think that Bengal was, as regards the rich, one of the most lightly taxed country in the world. The well-to-do people of Bengal, especially those in the permanently settled districts, had derived the greatest benefits from British rule, and for those benefits they paid an almost infinitesimal sum in the way of taxation. He had prepared some figures which he wished to lay before the Council upon this subject. He would only ask the Council and his Native friends who complained of excessive taxation to consider these figures, and then to say whether the rich and wealthy people of Bengal paid more than an infinitesimal amount of taxation. He thought even his hon'ble friend, Mr. Robinson, would not assert that the small quit-rent levied from landholders in Bengal was in the nature of taxation. On the contrary, he said that, so far from taking from the landholders any tax on account of the land, we had created in their favour an enormous property which never existed before. We knew very little of the resources of the land; but this he might say, that the revenue derived by landholders was, out of all proportion, large compared to the revenue paid by them to the Government. Take the heaviest assessed district in all Bengal, namely, Bardwán, in which the public revenue was so much as thirty lákhs of rupees, and even in that district the result of a reference made to the landholders themselves under the late rule was such as to show that the rent received by them was at least four times the land-revenue paid to Government; and in many places it was six, seven and even eight times in amount. If that were so in the Bardwán district, which was by far the most heavily-assessed district in Bengal, what was the proportion in some of the Eastern Districts, where the revenue was a mere flea-bite in proportion to the rent of the land? HIS HONOUR thought he might say that the annual revenue which we had created in favour of the various classes of landholders of these Provinces, was pro-

bably more than twenty millions; possibly it might be soon even forty millions sterling. He had observed in some papers that exception had been taken as to what had been said regarding the wealth created in favour of the zamíndárs. It was argued that the zamíndárs had created numerous sub-tenures, and that it was only in exceptional cases that it could be said that they were very rich. That was probably to some extent true. He was inclined to think that these sub-tenures were beneficial to the country: the benefit of property in land was thus distributed among a large middle class. At any rate, whoever held the land, it was held by the various classes of upper and under-holders, and there was a very numerous class of well-to-do people who had the means of living in idleness on the profits derived from their rents. He might say that the revenue derived from the land, whether it amounted to twenty or thirty or forty millions, was a property which was utterly unknown to any Native State; and the four millions which we took as land-revenue was in no possible sense a tax.

Then we came to a larger source of revenue in the Bengal accounts, namely, the Opium.

His Honour did not think that any gentleman present would say that the opium revenue was a tax taken from the people of Bengal. On the contrary, the opium cultivation was a means of enriching the people of the districts in which the poppy was grown. It was not a tax upon the people of Bengal. Well, then, what were the taxes which were really paid by these great provinces of Bengal, with a population which, he might say, the census would show to be nearer sixty millions than forty millions? What was the taxation borne by this people? The taxation consisted in this—

The Salt duties	£ 2,650,000
The Excise duties	£ 700,000
The Customs duties, assuming $\frac{2}{3}$rds of the total collections to be attributable to Bengal...	£ 730,000
Stamp duties, by far the greater part of which were Court fees	£ 800,000
Income-tax	£ 200,000
Total ...	£ 5,080,000

Including, then, the large amount of Court fees which are not usually reckoned as taxation, the amount of taxes levied from these sixty millions of people was, in round numbers, about five millions sterling, or on an average about one shilling and eight pence, or thirteen annas per head of the population.

Then, how was this taxation distributed? It appeared to His Honour that it was distributed in a manner which fell infinitely more heavily on the poor than upon the rich. A good deal more than one-half of the revenue was derived from salt, or about one shilling per head. That was a poll-tax which fell equally upon the rich and upon the poor. The duty on salt was generally reckoned to fall at about one shilling per head, and it was sometimes said—it was in fact constantly said by the rich—that one shilling a head could not be considered very heavy taxation; it had been often repeated that a shilling per head per annum was no great thing. But His Honour would ask the Council to consider that the shilling a head was taken on the whole population—men, women and children; but it must be paid by the heads of families. Therefore taking an average of five in a family, which the census showed to be somewhat below the truth, every head of a family bore a tax of five shillings, or Rs. 2-8 a year, on account of salt. Now, what proportion did Rs. 2-8 a year bear to the income of a labouring man? it was at the very least half a month's income; and it was therefore equivalent to an income-tax of more than four per cent. taken by this single tax. That being so, he did not think it could be said that the poor of Bengal were very lightly taxed.

On the other hand, a very small proportion of taxation was borne by the rich and the middle and the well-to-do classes of the people. He would take

next the item of excise. That was the most legitimate of all sources of revenue—the tax on spirits and drugs—so long as we do not stimulate the consumption, but rather check it by taxation. At the same time, he thought he might say that, in this country, the excise revenue was also mainly paid by the poor. If the rich were unfortunately learning from us the consumption of something stronger than water, they consumed spirits of European manufacture, the duty upon which went to the Customs revenue and not to the Excise; and therefore he might say that the Excise duty was mainly, or almost entirely, paid by the poorer classes.

Then we came to the Customs revenue, under a tariff which HIS HONOUR apprehended was one of the lightest in the world. In India a disproportionately large amount of the Customs revenue was paid by the European community, and taxation on the rich Natives by means of the Customs under the very light tariff was excessively small.

The Stamp revenue was, as he had said, principally made up of Court fees, for which the people who paid got a *quid pro quo* in the shape of litigation in the Courts. And the result seemed to be that, except a very moderate proportion of the Customs, and a very small proportion of the salt-tax, which the rich bore in common with the poor, the rich bore no other tax than the income-tax which stood at only £200,000 for this great Province. That being so, it must be admitted that the real amount of imperial taxation on the rich was not great. But, then, it was said—"yes, but there is the local taxation." He said that the cry which had been raised of the enormous burden of local taxation was without foundation. That cry had been taken up and repeated and believed in by the Natives of Bengal. If we were to accept it, we must suppose that the people were crushed by the most tremendous local taxation. He had seen it stated somewhere, that 250 of the cream of the inhabitants of the city of Murshidábád had been forced to abandon their hearths and homes and to fly to other lands owing to the weight of taxation imposed upon them. HIS HONOUR was surprised on a late occasion, that his hon'ble friend, Mr. Chapman, did not seem to be aware that the Local Governments had been called upon to give full information and figures about local taxation. He might state that, in answer to a call from the House of Commons, the Government of India had called upon the Local Governments to give an account of the whole amount of taxation in their respective provinces, imperial, local and municipal. That information had been prepared by the Government of Bengal, and was entirely at the disposal of hon'ble members. The return referred to the years 1870-71 and 1871-72. No additional taxation had been levied in Bengal within the last two years. The total local taxation in Bengal consisted of the following items: In one district of Bihár there was a very old one per cent. road-fund levied in addition to the land-revenue, which might be said to be the predecessor, if not progenitor, of the one per cent. local-fund of the North-Western Provinces, and which had been imposed on newly settled estates. The total amount of this tax in these provinces was the very insignificant sum of Rs. 37,569. Another local tax was the commutation of the duty of the zamíndárs to convey the local posts. Under a Bengal law this duty had been commuted to a money payment, which amounted to a sum of Rs. 2,47,219. There were no other local taxes except the two trifling items which HIS HONOUR had mentioned.

He would now come to municipal taxation. Municipal taxation did altogether come up to a tolerable sum; but when the figures of which it was composed were examined, it would be found that nearly three-fourths of it was paid by the great town of Calcutta, and other places inhabited by European communities. He found that the town of Calcutta, with the European communities of Howrah and the Alipore suburbs, contributed altogether as municipal taxation the sum of Rs. 32,28,921, whereas the whole of the rest of the inhabitants of the Bengal Provinces paid no more than Rs. 11,32,338, of which nearly Rs. 2,00,000 was derived from tolls, fines, and

such miscellaneous items. The real municipal taxation of Bengal amounted only to Rs. 9,53,107. Adding the several items of Local and Municipal taxation together, it stood as follows:—

One per cent. Road Fund	... Rs.	37,569
Commutation of the Local Post	... „	2,47,219
Municipal taxation	... „	9,53,107
Total ...	... Rs.	12,37,895

or £123,789-10, as the sum total of local taxation of all kinds in this great Province of Bengal. He said that this was a most infinitesimal amount of taxation, and to call it excess of taxation was the most preposterous thing that had ever been heard.

Then, it was said that municipal taxation pressed with great severity in particular towns. For instance, take the town of Murshidábád, which, it was said, the 250 respectable inhabitants had abandoned from the pressure of taxation. What did the Council think was the terrible taxation which was supposed to have driven those people from their homes? It amounted to the sum of Rs. 21,612, or £2,161, paid by the great capital of our predecessors in the Government of Bengal, the present seat of the ex-ruler and his Court, of many great bankers and traders, and of a large community. That sum, His Honour apprehended, would be borne by any petty towns in England, and it was preposterous to speak of it as an amount of taxation which had driven people from their homes in Murshidábád. Calcutta was undoubtedly heavily taxed.

Excluding miscellaneous items, Calcutta proper had an annual taxation of about twenty-five lákhs of rupees. In the Suburban Municipality of Alipore, &c., the taxation amounted to about three lákhs, and in Howrah to about one and-a-half lákhs. But when he took the other Suburbs of Calcutta, where we had two Municipalities called the North Suburban and South Suburban Municipalities, which were inhabited by a large class of well-to-do Natives, what was the taxation there? In North Suburban Municipality, it amounted to Rs. 11,847, or £1,184, and in the South Suburban Municipality to Rs. 21,895, or £2,189. It might be said that there might be exceptions; that, in some towns, the taxation might be excessive. His Honour would give the Council the figures of the highest taxed municipalities. The municipality in which the highest amount of taxation was realised was the town of Patna, which was a very large town, the seat of great wealth, trade, and resources. The taxation in Patna amounted to Rs. 51,289. Then there was the town of Dacca, which was a rich and populous town: the people of Dacca were very sensitive of taxation, as he knew by personal experience, and were said to be undergoing very hard and severe taxation. What was the amount of taxation there? It came to the sum of Rs. 34,477.

His hon'ble friend, Mr. Chapman, wished to know the sources from which this municipal taxation was derived. In the North and South Suburban Municipalities of Calcutta, and in the town of Murshidábád, the municipalities were administered under the local Act VI of 1868, where the tax levied was a sort of rough property and income-tax. The tax was assessed upon the "*circumstances and property to be protected*" of the rate-payers. Then, there were some other municipalities which were administered under Act III of 1864 of the Bengal Council. This Act allowed some variety in the forms of taxation; but the principal tax levied under it was a tax upon houses and immoveable property. Comparatively small sums were raised in some of these towns by a tax on horses, carriages and carts by licenses for offensive trades, and, in one instance, by licenses for processions. There were also some income from tolls and ferries, and from cattle-pounds and fines.

Many small towns were administered under several different laws, the general form of taxation being a rough assessment on means and substance. All these were included in the figures which he had given.

The system of octroi or town duties had not been introduced in Bengal, and there was no tax of that kind imposed. He had stated the figures which he had the honour to submit to the Council in regard to the existing local taxation in Bengal. But although we had not yet begun to levy it, we proposed to impose some additional taxation. Last year there was passed in the local legislature an Act, the object of which was to levy a small cess upon land for the maintenance and improvement of roads, canals, and other means of communication. The tax was to be solely and exclusively devoted to local purposes for the good of the localities in which the cess was levied. It was to be administered by local bodies appointed and elected for the purpose, and the proceeds were to be devoted to the objects to which the people wished them to be devoted. He hoped that the result would be to introduce much local self-government.

Further, the local legislature had under consideration a Bill for consolidating and amending the various existing municipal laws. He hoped that any new taxation under this law would be truly and really voluntary. His Honour was sanguine that the people of Bengal would find it beneficial to tax themselves for really useful purposes. The effect of the new law if it was passed would be to widen the discretion of the local bodies both as to the taxes to be levied and as to the objects upon which the money might be expended. A certain Police rate was compulsory, other things were mostly quite voluntary. The only new subject of expenditure was primary education: we proposed to add primary education as one of the objects upon which the revenues of municipalities might be expended when it was absolutely necessary to do so. With that exception it was not proposed materially to increase municipal taxation in Bengal. He thought that, when the educated people of the country came to examine the facts which he had submitted to the Council, they would be induced to believe that the people were not so heavily taxed as was supposed.

That was all His Honour had to say with regard to the subject of taxation in the Province with which he was connected. He would now offer a few remarks upon other subjects, confining himself to two or three special topics mentioned in the budget speech. He believed he spoke the sentiments of all who had experience of the matter when he said that the scheme for the assignment of revenue to the Provincial Governments, commonly known as the Financial Decentralization Scheme, had been a most complete, full and unmitigated success. He thought that every one who had experience would agree with him that in every way the change had been most beneficial. He believed that a healthy incentive to economy had been given to the Local Governments by means of that scheme. He believed that, under its influence, all the Local Governments had been economical. He believed that even the Bombay Government had exhibited a surplus which was something very new in that quarter. And not only had the change been productive of economy, but he might say that an enormous amount of friction had been removed in the relations between the Local Governments and the Government of India. He almost hoped that the Government of India were in a position to reduce the establishments of their Secretariats to one-half of their present strength. He believed that the diminution of correspondence between the Supreme and Local Governments had been very great. The system had effected a very beneficial change in that respect, and it had also taken away a very great source of irritation which had previously existed. He believed, he might venture to say as the result of his own experience, that things had worked smoothly to a degree never known before. He gratefully acknowledged that he had received the most constant and generous support from the Government of India. He believed that in the course of the last year not one word had passed between the Government of Bengal and the Government of India such as had often arisen before this Financial Decentralization Scheme was put in force by the wisdom of the Government of the late Viceroy.

His Honour wished to add one word in support of the view propounded by his hon'ble friend, Mr. Robinson, as to the system of borrowing money for the construction of what were called reproductive public works. He viewed with considerable apprehension the new system of loans for extraordinary disbursements. He had very considerable misgivings upon that point. It appeared to him that it was not every work to which the name of reproductive was given which was really reproductive. We were undertaking very great works of Irrigation. He would only remind the Government and the Council that the Government were undertaking these works simply because no one else would undertake them. Two companies which had been established for the construction of large works of Irrigation had broken down, and the Government was obliged to take over those undertakings and proceed with them. He sincerely hoped that these canals would have much effect in staving off those calamitous seasons of famine to which we were liable; but at the same time he must say that the calculations of the revenue to be derived from these canals made by sanguine Engineer Officers were not worth the paper upon which they were written. We must expect that for many years at least, with regard to a large proportion of these canals, the Government must consent to bear a great portion of the outlay to save the country from famine; and it could not be said that all these extraordinary Public Works were certain to be successful as commercial speculations. The estimates of revenue must be made entirely anew from better materials before they could be depended on.

Then, there was another subject which was suggested to him by the observations which had fallen from his hon'ble friend Mr. Inglis. His Honour did not agree with Mr. Inglis that the reason why the Natives did not take to our loans was that income-tax was levied upon the interest payable to the fund-holder. But he knew that it was the fact that the Natives did not lend us their money now as they did before. In times gone by a far greater proportion of our loans was held by the Natives of the country. For some reason or other this had changed. His Honour believed that a great part of the change was due to the modernizing of our system of finance. We had followed the English system of contracting loans rather than the French system. It was the habit in England to deal with the great capitalists instead of applying to the small people of the country. In former days we used to deal with the people by the system of open loans, and we used to get our money from the people at a very cheap rate. A certain income from Government was very greatly prized. So much was this the case, that when we tried to pay off the small loan-holders in Lucknow, we could not get them to take the money. His Honour thought that, if we were to borrow for great Public Works, there was no reason why we should not have an open four per cent. loan under the system he had suggested. The evil was that, under the present system, the people were not only debarred from subscribing to our loans, but there was that enormous difficulty resulting from the figures which the Hon'ble Member in charge of the Financial Department had given us, that we must send thirteen millions from India annually for the service of the Secretary of State. That was an enormous sum for India to pay. We could not go on borrowing for ever in England for what were called Reproductive Public Works; if we did so, it would be necessary to transmit to England annually a sum beginning with thirteen millions now, and which would go on increasing. His Honour therefore did hope that the Hon'ble Member would devise some means by which we might get the rapidly accumulating wealth of the people of the country instead of taking our money from England, and from England alone. The payment of so enormous a tribute by India to England as that which the remittances represented must be a source of difficulty and danger.

The Hon'ble Mr. Robinson had alluded to the sugar duties and the salt duties. His Honour wished to say a word or two upon those points. He did not think that those sugar duties levied on the Delhi frontier were so great an evil as was generally supposed. Export duties were an evil when there was

competition with a rival trader; but when we had a monopoly like Opium, as in the supply of sugar to Central India, he did not think any great amount of harm was done. But he would draw his hon'ble friend Sir Richard Temple's particular attention to this extraordinary fact, which he thought would interest the Hon'ble Member, that not only did we levy an export duty on sugar exported to Rájputána, but at this moment sugar sent from one part of our territories to another was charged duty under our own rule, and within our own territories, that is to say, when carried by rail from Benares and the North-Western Provinces to the Bombay territories, it was charged duty at Hoshangabad. If it was brought down to Calcutta and sent round by sea, it paid no duty, but if sent direct by rail, it was charged a heavy duty, much heavier than that charged on the Mauritius sugar which competed with it, and the consequence was that the trade once existing had been killed.

His Honour did hope that the Hon'ble Member would not allow this extraordinary anomaly to exist. He would also explain with regard to the salt duties that it was a mistake to suppose that it was the duty which threw the trade into the hands of the Cheshire manufacturers. Cheshire salt had superseded the Native salt in Bengal, for this simple reason that Bengal being a very moist climate, salt could not be obtained at a cheap rate by solar evaporation, as in other parts of India, but was only made by boiling, at an expense of twelve or thirteen annas per maund, say a farthing a pound, while Cheshire salt was made for next to nothing, and owing to the circumstances of the trade, was imported very cheap. He believed it would be just the same if there were no duty at all.

His Honour had been struck with the observations which fell with such weight and point from the Hon'ble Mr. Robinson in his discourse to-day upon the land-revenue. His Honour was not going into the intricate subject of the ancient history of India, and whether in the days of Menu the full rent was taken from the holders of land or not. But this he would say, that the full rack-rent of the land was exacted from the people by the Native Governments of the country so far back as we had any knowledge of the matter; that they took all that they could get; that the only limitation was the power of the people to pay. He entirely agreed that property in the land in one sense did exist in a strong degree; the right of occupation in the land was what no Native Government attempted to disturb. But property in the sense of a right to the rent did not exist in Native States. Then, we came to the question of our assessment of the revenue. It appeared to His Honour that we had become from day to day more lenient in our demands, until we had created a great property in the land which was utterly unknown to the Native States; and the question had arisen whether it was wise and prudent to do as we were doing, and whether we were not taking too little as the Government share of the rent of the land. He must confess that it was with some surprise that he found that the observations which had been made on a former occasion in this Council upon this point were controverted in an anonymous paper published in the Gazette of one of the Local Governments. He was particularly alarmed by two points in that paper, which he supposed must have some sort of authority, being published as it was. One of the points was this, that the Local Government professed to take as land-revenue fifty per cent. of the rent, but that no sufficient provision was made for an increase during the long period of settlement. The value of money and produce was undergoing rapid change, and he thought the paper to which he alluded showed that the provision for future increase made in the North-Western Provinces was insignificant and insufficient. The result of that paper was to convince His Honour that before the thirty years for which the settlements were made had expired, the existing assessments would not amount to fifty per cent., but probably to some thing like twenty-five per cent. or less of the net assets. Another point which was noticed in that paper was still more alarming, and gave greatly increased force to the doubts which His Honour

had long entertained regarding the land settlement system of the North-Western Provinces, where, as in some other parts of India, settlements were made with the actual cultivators of the soil; the system was a very good one. When such a cultivating proprietor had fifty or sixty rupees profit in addition to the return for his labour, he did very well. But in many parts of the North-Western Provinces there were very numerous proprietors who did not cultivate themselves, and their number was rapidly increasing. The argument of the writer of the paper seemed to be that we must give to such people the means of living, and that if they multiplied from scores to hundreds the revenue must be diminished to enable so many drones to live. He looked on that as a most dangerous and demoralizing doctrine. His Honour might say this, that the result of many discussions had been to create in his mind the greatest doubt whether the recognition of this property in the land had not been altogether a mistake. If we were free to assess the land in the way the Native Governments did, we should be above the necessity for all income-tax. We should then have money for all sorts of purposes. But his impression was that they could not now go back. We had created a property in the land which was never known to the Native Governments. The property had been created, and once you had established that property in the land, it was very difficult suddenly to alter its value by any great increase of assessment. So long as the people thought they had a mere right of occupancy in the land, they were content to pay a full rent, but the longer the settlements lasted, the more they became discontented when an increase was imposed. In the early part of this century the people of Madras paid a large land-revenue; but in the course of a long administration, that revenue had been allowed to go on without enhancement of rates. Now that it was proposed to increase the rates, we had a distinguished member of the Board of Revenue, like the Hon'ble Mr. Robinson, protesting against any increase as an atrocity and injustice. People who had sat for sixty or eighty years at rates becoming easier and easier, were more and more unwilling to pay more, and, practically, it was very difficult to raise their revenue. We very much doubted whether, having once created this form of property, we should not be driven to a permanent settlement after all.

At any rate, in Bengal, we had a permanent settlement. Hon'ble Members were aware, not only that our faith was pledged, but that such numerous interests were involved, that, in Bengal, it was utterly impossible to disturb the existing arrangement. Therefore His Honour was inclined to believe that we must find new modes of taxation to increase our revenue to meet the increasing demands of modernised administration. That was why he feared that either the income-tax must be improved, and must be made into a permanent tax, or that some other tax must be substituted for it. If it was to be continued, he did hope that the Government would consider the question of localizing the tax and making it a portion of the very successful decentralization scheme. Our local taxes were, as he had explained, mainly income and property taxes; and he did not think that we should have two tax-gatherers going about the country to collect two similar taxes, one for the local administration and one for the Imperial Government. He did, therefore, very strongly hope that the Government would consider the advisability of making the income-tax over to the Local Governments for local purposes, if it were to be retained.

Before he left the subject, he also wished to express the strong hope that this subject of the income-tax would receive the careful attention of the Government before the next season came round. He hoped that they would cease to use it as a stop-gap at the end of the year to fill up a small deficit. He hoped they would lay before the Council, at an early period of the Session, the views they had matured on the subject in the cooler and more intellect-compelling climate of Simla. He might venture to say that, during the whole period that had transpired since the passing of the last Act, the

Government of India had not thought fit to consult the Local Governments upon the subject. His Honour had thought himself bound to inform himself upon the subject as far as he could, and in that matter he was greatly assisted by the eminent member of the Civil Service who presided over that Department of the Board of Revenue which controlled the administration of the income-tax. But he had done so of his own accord, and not in answer to any call from the Supreme Government. He thought every possible information should be obtained before the next discussions in the Council; and that the Council should have time very fully to deal with the subject if it were to come before them at all. Next time, the tax should either be adopted as a permanent part of our system or made over to the Local Governments, or abandoned altogether. It should not be continued in its present precarious footing.

Major General the Hon'ble H. W. Norman said that he could have wished that, in the course of his speech, His Honour the Lieutenant-Governor had expressed a more decided opinion on the general question of an income-tax in India, for such an opinion would have been most valuable. He was himself no friend of an income-tax for this country, and he would have been very glad if it had been found possible not to impose it in the ensuing year. It was a tax that appeared to him very unsuited to India. It opened a large door to fraud and injustice of various kinds. Without any reference to reports, the perusal of which had been so desired by some of his hon'ble friends, he thought that every one who knew the Natives of this country might be quite certain that the levy of an income-tax, would lead to frauds by subordinate officers, which it was impossible for the higher officials effectually to check. We had also heard various other objections to the tax in detail given in forcible language by the Hon'ble Mr. Inglis, whose statements were, he believed, in the main accurate.

Major General H. W. Norman freely admitted that if the income-tax was to be maintained at all, it could hardly be imposed in a less objectionable form than was now proposed, namely, at the low rate of one per cent., and with the minimum amount of taxable incomes raised from Rs. 750 to Rs. 1,000, and this, too, without the annoyance of a re-assessment for the coming year. With the taxable limit of incomes raised to Rs. 1,000, it was difficult to suppose that any large number of really poor people could be forced improperly to pay the tax, for there was a very wide distinction between a Native with the income of Rs. 1,000, and one who could be considered poor; though even with this advantage he feared there would still be cases of fraud.

The question, however, still remained, why retain a tax at all which only produced about one per cent. of the general income of the Empire, which is most unpopular, which is always hotly opposed both within and without these walls, and which took up the valuable time of our officers, which would be far better employed on other objects? The answer to that, as given by his hon'ble friend, Sir Richard Temple, and others, was two-fold; first, that, as the Government was in a sort of transition state, it would be unwise to attempt to dispense with the tax this year, and thus render it difficult to re-impose it next year. That was one of the reasons that had been given for the retention of the tax this year. But he did not think that that was sufficient itself to justify the retention if there had been a surplus without it. But then came the other reason that, without the income-tax, there would be a deficit of about £300,000, and there was therefore no help but to re-impose it, and with its aid, instead of a deficit, there would be a moderate surplus of about a quarter of a million sterling. No one, he presumed, would seriously advise that we should budget for a deficit merely because we had large cash balances, which, however, as shewn by his hon'ble friend Sir Richard Temple, would have to be used to meet heavy liabilities, and no one had proposed that we should at the present time launch a new tax in lieu of the income-tax. Therefore, unless it could be shown that the revenue had been set down at too low a figure, or that we could retrench the expenditure in any respect, it appeared necessary to re-

impose the income-tax. It had not been seriously asserted that any of the items of revenue were under-estimated except Opium; and from all he had heard on the subject, he was assured that the estimate taken by his hon'ble friend, Sir Richard Temple, was fair and proper.

With regard to the expenditure, he would remind the Council that all the Departments of the Government had recently enjoyed the benefit of the supervision exercised by the late Viceroy, who had enforced very rigid economy in every branch of the service, and habits of economy had been instilled in every department which it would take more time to weaken. Many savings had been made, and we may hope for more; but then there are never-ceasing demands for improvements. In the departments with which Major General H. W. NORMAN was more immediately connected, he could not contemplate any material saving of expenditure. The military expenditure had been submitted to the most rigid scrutiny, and during the last two or three years many savings had been made. Some more may be expected, but the result of those which were in the power of the Government of India would not be large, and might be counterbalanced by demands for improvements which could not be resisted. Those who had not dealt with military expenditure could hardly appreciate the difficulty of saving even a few thousand pounds without a reduction in the number of the men, horses, cattle or material, none of which it was proposed to touch. His hon'ble friend, Mr. Chapman, was mistaken in supposing that the military savings in 1871-72 were mere matters of adjustment. They were partly due to downright savings, and partly due to a fortunate fall in prices; nor did he see how, as suggested by his hon'ble friend, a low expenditure in provisioning Europeans, and in compensations for dearness of provisions to Natives, should necessarily lead to increased expenditure in future years. The diminished purchase of horses, to which Mr. Chapman alluded, was due to the fact that five batteries of Artillery went home about fourteen months ago, and left a considerable number of horses for distribution, thus lessening the number to be purchased. With regard to Military Public Works, the expenditure had been reduced from £1,834,113 in 1867-68; £2,187,776 in 1868-69; £1,510,150 in 1869-70; £992,996 in 1870-71; £1,012,500 in 1871-72, to £910,450 in 1872-73. He did not think it was possible to go below the last sum without evincing a culpable disregard to the comfort and health of the European troops. He rather apprehended that some extra money might have to be applied for, to enable work to be carried on on important defensive works, which had recently been reported on by the talented officer of Royal Engineers who had been brought from England for the purpose, and which report was under the consideration of the Government. In the Marine Department the whole expenditure had recently been carefully considered by Admiral Sir W. Meads, and the Hon'ble Sir Richard Temple had also paid considerable attention to the subject, so that the expenditure for the coming year has been lessened, partly in anticipation of savings, by about twenty per cent. Taking these three great sources of expenditure together, he did not think that the Government could hope to do much more than to keep within the estimates.

As the deficit, therefore, could not be otherwise prevented, he would support the motion; and, notwithstanding his objections to an income-tax, he thought that the exposition of his hon'ble colleague, Sir Richard Temple, showed that the finances were in a satisfactory and creditable condition. Before concluding, he desired to express entire concurrence with his hon'ble friends, Mr. Stewart and Mr. Chapman, as to the necessity of watching the progress of municipal and local taxation. He had said before that he believed as much dissatisfaction had been created by municipal taxation as by the income-tax, while it extended to larger classes. He feared that, in some places, municipal taxation was imposed on very needy people, more for purposes of ornamentation and appearance than for really necessary objects, and he commended the subject to the very serious attention of his colleagues.

The Hon'ble MR. ELLIS had much to say on land assessments, revenue settlements, and many other matters which had been discussed by some of the

Hon'ble Members who had preceded him. But as those subjects could hardly be considered pertinent, he would refrain from taking up the time of the Council, and would proceed to offer a few brief comments on the observations made by Hon'ble Members in reference to that which was immediately before them. These observations might be divided into three heads:—The first embraced the strictures which had been passed on the financial position of Government, the second included the consideration of the general fiscal system and the necessity for its revision, and under the third head came the income-tax and the Bill itself.

With reference to the strictures upon the financial measures of Government, he would not detain the Council, for his hon'ble colleague the Finance Member would hardly thank him for anticipating what could be so much better dealt with by the Hon'ble Member himself. He (MR. ELLIS) would be satisfied with referring to one point only, as connected with a branch of the administration in which he had always felt the greatest interest. On the question of the pressure of local taxation, he conceived that some members had, from want of sufficient information, formed hasty impressions. Possibly they might prove to be right, but at present the Council had not before them sufficiently detailed statements to allow of correct deductions being drawn. He hoped that in future years, when other Governments had published statistics in detail such as had been given in respect to Bengal and Madras, it might be possible to arrive at safe conclusions. He would refer to the Finance Member's Budget statement itself in illustration. The Hon'ble Member had stated that three quarters of a million of local and provincial taxation had been newly imposed, but that amount included the new road cess of Bengal of which not a rupee had yet been levied; the non-agricultural tax of Bombay which had certainly not turned out in its first year as productive as it was estimated, and the new taxes in Madras, some of which were to come in force by slow degrees. Thus, the amount actually raised was much less than the amount put down. Moreover, the figures given as the total of local and provincial funds, and upon which Hon'ble Members based their arguments, included many sources of local income that were not taxes at all. We must therefore guard against the assumption that figures showing local and provincial funds represented the amounts of local and provincial taxation.

Under the second head, the revision of the general fiscal system, some Hon'ble Members had discussed the question whether the income-tax had a preferential claim for remission, in comparison with other items of taxation. But the question now before the Council was simply whether the income-tax should be reimposed for one year, and therefore he did not think it appropriate to discuss the larger questions upon which his hon'ble friend, Mr Chapman, had entered, though he (MR. ELLIS) believed that his hon'ble friend's suggestions all deserved careful consideration at the proper time. This consideration, he hoped, they would receive next year, when Government would be in a position to review the whole fiscal system and make such reforms as may be deemed proper. Owing to the exceptional circumstances in which Government were at present placed, this was not now possible, and therefore he would confine himself in his further remarks to the third point discussed, namely, the income-tax and the Bill now before them.

"He (MR. ELLIS) would in the first place refer to the remarks of his hon'ble friend Mr. Inglis, who had contested the correctness of the assertion made by him last year, that the administration of the income-tax in the North-Western Provinces was susceptible of great improvement. In reply, he need only refer to the letter from Sir William Muir already quoted by his hon'ble friend Mr. Chapman. His Honour of course wrote cautiously, but still it was plainly enough stated in his letter that already the abuses connected with the income-tax had in a great measure been removed, and it was fairly to be inferred that the Lieutenant-Governor himself was of opinion that the income-tax might be worked satisfactorily in the North-Western Provinces provided certain alterations were made. Most of the suggested changes

had his (MR. ELLIS') complete concurrence. Some of them had been made by the Bill now before Council; others would be effected when it was possible to remove the temporary character of the tax. His hon'ble friend, Mr. Inglis, had insisted at some length on the administrative difficulties in working the tax; but even if these difficulties existed before, they could hardly occur in the current year, when the Collectors would be relieved of nearly the whole work of assessment by the terms of the present Bill. He thought, therefore, that whatever value the Hon'ble Member's opinion on this point might have had with reference to other Bills, his objections were inapplicable to the Bill now before them, which fixed all the assessments of incomes of rupees one thousand and upwards of the past year at the same amount during the currency of the tax under the present Bill. He believed, therefore, that the prospect of working the income-tax successfully in the North-Western Provinces was very hopeful. He would also refer his hon'ble friend to the Province of Oudh, the immediate neighbour of the North-Western Provinces. He (MR. ELLIS) had received letters from General Barrow, the Chief Commissioner of Oudh, who would be admitted to be a good authority on all matters relating to that province. These letters being private he did not produce, though if he could have referred to General Barrow, doubtless no objection would have been made. From these letters it was clear that General Barrow was entirely at issue with the Hon'ble Member regarding the oppression and corruption supposed to take place in working the income-tax. General Barrow said emphatically that the oppression and corruption were not greater than ordinarily occurred in the Settlement and other Departments; and he added that since his return to England, he had had many correspondents among his Native friends in the province, upwards of forty, if he (MR. ELLIS) was not mistaken, and these not of one class, but including taluqdárs, merchants and others, all liable to payment of the income-tax. General Barrow stated that his correspondents had written to him freely and unreservedly, and told him all the grievances of themselves and other people in regard to decisions of the Settlement and Civil Courts; their disputes among one and another and other matters public and private, but not one of these correspondents had ever mentioned a single grievance in connection with the income-tax. This was worth something in his (MR. ELLIS') opinion as the testimony of a high officer thoroughly well acquainted with the country, in respect to the working of the income-tax in the Province most closely allied to that Province regarding which they had heard so much from his hon'ble friend Mr. Inglis.

He (MR. ELLIS) would next advert to the remarks made by his hon'ble friends Mr. Stewart and Mr. Robinson, who both objected to the tax in any form. He could not admit that the tax had been rightly called an emergent tax. Whatever may have been the object with which an income-tax was originally raised in India, there was nothing to prevent its imposition permanently. If, on former occasions his hon'ble colleague, Sir Richard Temple, had confined his arguments to the immediate financial necessity, he had done so because such financial necessity was of itself a sufficient justification. But he (MR. ELLIS) could recall nothing that had been said by any member of the Government to lead to an inference that the Government had committed itself to the view that the tax should be levied only on an emergency. His hon'ble friend, Mr. Robinson, had stated his belief, based on what he (MR. ELLIS) had said to be that Government had a covert intention of continuing this tax permanently. Now, he had been most careful to guard against the supposition that his individual opinion in any way represented the opinion of Government, and, in fact, he had stated that Government especially avoided a decision at the present juncture. But his own opinion was certainly not a covert one. He had said clearly that he deprecated the temporary character of the tax as at present levied, and on this point he most fully concurred in all that had fallen from his hon'ble friend Mr. Bullen Smith. He would say further,

that he desired to continue the tax in its present modified form, without any period being fixed for its cessation, the high minimum being the essential feature to be maintained as obviating those evils which had given the tax a bad name in its special application to this country. It was not his wish to have the tax levied *permanently*, for that was not a correct expression, but he wished the tax recognised as a part of the general fiscal system, like the Salt tax, Customs duties, or other sources of revenue. If the Goverment were in a position to remit taxation, the claims of the income-tax would then be considered in common with those of salt and other duties. It had already been explained why no general revision of taxation was this year possible. Under other circumstances, Government would probably have been prepared to raise the general system of duties and taxes, and declare whether the income-tax should or should not form part of it. He trusted that this would be done next year, and if the estimated surplus proved larger than was anticipated, he would especially rejoice, as Government would then be in a better position to deal with the question broadly, and would be able to incur some risk to secure so important an object as a complete and thorough reform of the whole fiscal system.

The Hon'ble MR. STEPHEN said: "My Lord, I will not occupy the Council for more than one minute.

"I shall vote for the Bill on the ground that Sir Richard Temple's estimate is correct, and that there would be a deficit without the income-tax.

"The proof of this proposition I shall leave in the hands of Sir Richard Temple.

"Assuming its truth, and bearing in mind the provisional character of this government, and the fact that we have to provide for the current year here and now, I think it clear that we can neither diminish expenditure nor increase income to the extent required by any other means than the revival of the income-tax, nor has any one attempted to show that we can."

The Hon'ble MR. STRACHEY said—"My Lord, I have so often on previous occasions stated my own opinions on the subject of the income-tax that I will not, at this late hour, say more than a few words. While I am quite alive to the faults of the income-tax, I have always believed that the abuses of which we have heard so much have not been its necessary consequences. I believe that they have mainly arisen from causes which have either ceased to operate altogether, or which are clearly avoidable. I have always held that there are other existing burdens worse than the income-tax, and that there are fiscal reforms more urgently required than its removal. But I do not think that the merits or demerits of the income-tax are really now a question at issue. Under the altogether exceptional circumstances in which we are unhappily placed, the temporary retention of the tax appears unavoidable, and, as it has already been said in this Council, the Government now simply desires to maintain the *status quo*, and to reserve altogether for future consideration the question of the retention or abolition of the income-tax with all the other questions of financial reform to which reference has been made.

"My Lord, there is only one other matter which I wish to notice. I have heard with great satisfaction the testimony which His Honour the Lieutenant-Governor of Bengal has borne to the success of the measures taken last year for increasing the financial powers and responsibilities of the Local Governments, and for entrusting them with the control of their own provincial affairs. Similar testimony has, I believe, been given by almost every Local Government in India, and I heard His Honour's remarks with no common pleasure, because I felt that he was giving his testimony to the wisdom and the forethought of the great Statesman whose loss the Nation now deplores, and was paying a tribute to his memory which he himself would have prized; for Lord Mayo was satisfied that as time went on and the system in question was

developed and improved, it would be found that a reform had been carried out, which, more than any other reform, had tended to place our finances on a permanently sound footing; had improved the efficiency of many of the most important branches of the administration, and had for the first time established rational and harmonious relations between the Supreme and the Local Governments. The honour of practically inaugurating this great reform belongs to Lord Mayo alone. It was emphatically his own work, and all my colleagues in the Executive Government will confirm my assertion that, but for the personal interest which he took in it, and his personal determination, it could not have been carried out at all.

"I wish, my Lord, that it were possible for me now to speak of the many great financial and other improvements which we owe to his sagacity and energy, or which he contemplated, and would certainly have accomplished if he had lived. My hon'ble friend, Sir. Richard Temple, has already spoken of the interest which Lord Mayo took in the business of the Financial Department. There was no branch of the administration to which he devoted more close and constant and personal attention, and there is none in which he liked to see his labours rewarded by a larger measure of success. Keen and generous as the appreciation by the public of Lord Mayo's services has been, it has still to learn the full amount of the gratitude which it owes to him personally for the great improvements which have been accomplished, or which are still in progress."

His Excellency THE COMMANDER-IN-CHIEF said that after the excellent discourses which the Council had heard from the Hon'ble Members to whom he had listened with the greatest possible attention, it would be very unreasonable for him to detain the Council with many remarks. There were points to which he had listened with much interest, and in regard to which he should have liked to offer some observations; but his doing so would not tend towards the settlement of the present question, which was confined to the fact that the budget showed a deficit, which made it necessary to continue the income-tax in order to maintain a financial equilibrium. His own opinion regarding the income-tax had been expressed here before, and nothing which he had heard from the hon'ble gentlemen present had in the slightest degree altered the opinion which he entertained and had expressed last year.

But the question now before them was merely to maintain the present financial arrangements of the Empire for this year, in order to leave the coming Viceroy an opportunity to consider thoroughly the whole subjects of the financial policy for the future before being committed to any important measures. For these reasons, he should vote for the Bill.

The Hon'ble Sir RICHARD TEMPLE said:—

"My Lord, at this late period of the debate I shall not attempt to discuss the various matters introduced by the Hon'ble gentlemen who have spoken to-day in opposition to this bill. There is only one matter which I must treat at some length, inasmuch as it has been so pointedly alluded to, namely, the state of the cash balances. I must also touch on the principle of the income-tax bill itself.

"The cash balances then, and the principle of the bill must form my main topics on this occasion. But before dealing with them, I will notice in the briefest terms some few of what I may call the miscellaneous topics adverted to by my Hon'ble friends on the left.

"In the first place I am unable to follow the Hon'ble Mr. Bullen Smith in his criticisms on the financial relation between the Government of India and the Home Government. Surely my Hon'ble friend must know that all this forms part of the constitution of the empire, and is hardly a subject for discussion in this Chamber. Neither can I undertake to re-open the controversy respecting the terms offered by us for the recent conversion of the 5 per

cent. loan. That question was disposed of by the correspondence between the Financial Department and the Calcutta Chamber of Commerce.

"I acknowledge the friendly and considerate terms in which my Hon'ble friend Mr. R. Stewart is pleased to speak of the mode in which the Financial Statement has been prepared. I cannot, however, agree with my Hon'ble friend in thinking that there has been over-caution this year in framing the Opium estimate. No doubt, that estimate does provide for the contingency of a possible fall in prices. And that is well. For, already, that is, within the last few days, there has been a considerable fall in these prices. It is to be recollected that in 1870, when we resolved to redouble our caution in regard to the Opium estimate, we had had ten years' experience of the differences between the estimates of Opium revenue and the actual out-turn. And though there had been some years surplus of the actual over the estimated sum, there had in some years been considerable misfortune in the way of deficiency of actual out-turn as compared with the estimate. Indeed, the embarrassment caused by our receiving a sum less than anticipation is apt to be greater than the convenience of receiving a sum greater than anticipation. I saw then that in Opium, there had been four years of surplus, amounting in all to 5½ millions; whereas, on the other hand, there had been three years of deficit, amounting in all to 3 millions. These circumstances inspired us with increased caution, which has been followed certainly with some success since 1870.

"I desire to show every respect and consideration to the speech of my Hon'ble friend Mr. F. Chapman, who is one of the few supporters of the income-tax among the Hon'ble Members on the left. But there is one point which I can hardly refrain from noticing. My Hon'ble friend seems disposed to reproach the Government with aggravating the evils and troubles of the income-tax by enacting it for one year, and then again for another year, instead of enacting it for some fixed period, or for some considerable period without any particular limit of duration. Now, I must remind my Hon'ble friend that in 1871 the Government did not propose to enact it for one year, but proposed to enact it for an indefinite period. In fact, we desired to do exactly what my Hon'ble friend now seems to think we ought to have done. And why did we not succeed in doing this? Because there was so much opposition from Members on the left in this very Council that we deemed it better, on the whole, to take the tax for one year with option of renewal. It therefore hardly behoves my Hon'ble friend now to reproach us with that!

"My Hon'ble friend seems to desire more details of the various establishments and heads of service. I must remind him that this information is always published in the shape of a bulky quarto volume. The volume for last year must have been in my Hon'ble friend's hands for many months past. That for the new year will be very shortly given. The information thus given is probably equal, in quantity at least, to that afforded by any Government in the world.

"I cannot possibly pursue the Hon'ble Mr. Robinson throughout his discursive speech. I must object to his expression about our "financing in loans to municipalities." This is surely not the way to speak of our beneficent operations in this respect. We lend municipalities money at 4½ per cent., which they would otherwise have to borrow at 6 per cent. Thereby the inhabitants of the towns are saved so much of taxation, while not a fraction of burden is on this account imposed on the country at large. I further object to the expression about faith being broken with the people, and assurances being contravened by the maintenance of the income-tax. Since 1869 my Hon'ble friend cannot, I am very sure, find any trace of such assurance. Whatever assurance could be found relates to the five years' income-tax which was passed in 1860 and expired in 1865. My Hon'ble friend tries to prove that the revenues are very elastic by contrasting the sum total of receipts now-a-days with the total some fifteen years ago. He seems to suppose that all this represents the natural growth of the

revenue. But he apparently forgets that there have been additional taxation, and enhanced rates of previously existing duties, and a variety of new sources of receipts opened out. If allowance be made for all this, he will find that our revenue, though not otherwise than flourishing, is yet very far from being elastic. Then my Hon'ble friend, alluding to the fact that the budget shows an increase of more than one million in civil expenditure, declares that there is an evident relaxation of economy. But he apparently ignores the explanation which was rendered together with that statement which showed that the greater part (three quarters of a million) is owing to reproductive expenditure in Opium culture, and that only £170,000 are really owing to the Civil Departments in India; for which small increase even there is explanation afforded. I affirm that there is no ground whatever for my Hon'ble friend's inference.

"In his researches as to the forms of taxation originally adopted by the Hindus, my Hon'ble friend refers to a passage in Menú, the law-giver. It is curious that the very passage which he cites from Menú includes, in its strongest form, that very income-tax which people now find it convenient to say is quite dissonant from Hindu notions. Why, if Menú be the authority, I might show the income-tax to be included among the original institutions of the Hindus.

"Again, my Hon'ble friend speaks as if Lord Lawrence (a great authority) was opposed to the tax on income derived from land. As is well known, Lord Lawrence was an advocate of the income-tax, and I do not recollect that he made any exceptions in favor of any class or interest.

"Then, my Hon'ble friend, alluding to the advice he gave me last year to take higher the estimates of various items of revenue, states that the result has shown the correctness of that advice. Now, as that advice was specific, I must point out that it has in every single particular proved to be fallacious. For instance he thought that the land-revenue ought to have been estimated £300,000 more, but it is turning out, on the contrary, £140,000 less. He said that Excise ought to have been estimated £100,000 more, it is turning out only £10,000 more; that Customs should have been £130,000 more, whereas they are turning out only £3,000 more. He said that Salt should have been estimated higher, but it is turning out, on the contrary, £190,000 less; that Stamps should have been estimated higher, whereas they are turning out £46,000 less; that Irrigation receipts should have been taken higher, whereas they are coming out £25,000 less. Thus the Council will see that if I had attempted to follow my Hon'ble friend's advice last year, I should have been led into great error. I regret to have been obliged by the tenor of his present remarks to produce these points against his arguments. But after this he will hardly expect me to enter into similar criticism which he ventures upon respecting the present budget.

"In regard to the Hon'ble Mr. Inglis's speech, which simply resuscitates the discussion between the Government of India and the local Government of the North-West, regarding the administration of the income-tax, it will, I trust, suffice to refer my Hon'ble friend to the correspondence which was published in the *Gazette*, whereby it clearly appears that the evils described are not necessarily incident to the tax, but in part arose from misapprehensions, which may be, and doubtless will be, remedied in future.

"There are some points in the speech of the Lieutenant-Governor of Bengal which I must briefly touch upon.

"I was surprised to hear His Honour, alluding to the 13 millions to be drawn from India by the Secretary of State's bills, speak of this sum as tribute paid by India to England. Doubtless His Honour will not need instruction from me as to the real nature of these payments. But I dread lest such expressions falling from so high an authority may confirm a misapprehension but too prevalent on the matter. Of course the payment in question is *not* tribute at all. It represents the payment by India of debt which she incurs for her own service in England. It includes the payments for the salaries and pensions for

Indian officers at home, civil and military; for the expenses incurred at home on account of the European troops in India; for the stores sent out for all the Departments in India; for the interest on the loans raised at home for the service of India; for the guaranteed interest on the capital raised in England for the railways in India. These facts speak for themselves, and show that India is not paying tribute to England, but is merely paying for what she takes, and is only discharging indispensable obligations.

"His Honour regrets the fact that so small a proportion of our public debt is held by Natives, and thinks that by imitating the French system we might improve matters. The real cause, however, is this, that English competition has to a considerable degree, driven the Natives out of the loan market. The English capitalist will lend us money at 4½ per cent. The Native can seldom afford to do so. That is the short of the matter. While this cause prevails, we can hardly help the circumstance to which His Honor alludes. Nor do I at all share his hope that by accepting small loans we can effect any considerable change. We are virtually trying this very plan by our district savings banks. We there offer 3¾ per cent. to depositors on deposits repayable at call. These liberal terms are as yet attracting but few depositors. The total deposit does not exceed 1¼ million sterling. And this hardly encourages us to hope that 4 per cent. open loans, for sums however small, would prove successful.

"I concur heartily in what His Honour says of the risks attendant on the extraordinary expenditure we are incurring for reproductive works. But this only proves the necessity for the strictness or severity we have enforced in our ordinary finance. It shows that we are quite right in imposing income-tax, in effecting reductions, in maintaining a strong cash reserve.

"Having thus briefly disposed of what may be called the miscellaneous points, I approach the main point, namely, the "Cash balances," so pointedly adverted to by my Hon'ble friends Mr. Bullen Smith and Mr. Stewart. The substance of their remarks is this that the cash balances are far too large.

"In the first place, I must demur to the manner in which Mr. Bullen Smith speaks of the discrepancies between estimates and actuals of the cash balances. It might, *primâ facie*, be supposed from the tone of my Hon'ble friend's remarks that full explanation of these differences had not been afforded. For instance, much is made of the difference of 7½ millions between the first anticipation and the ultimate result for 1870-71; whereas the statements given at the time showed how the difference is accounted for, namely, by the improvement in the opening balance (1¾ millions), the surplus in ordinary finance (better by 1¼ millions), the extraordinary expenditure less than estimate by 2 millions, the general deposit account better by 1¼ millions, the railway capital account better by 1½. Now, these explanations will be found complete, and they were apparent from the first. Again, my Hon'ble friend makes much of a similar difference in 1871-72. But I have so recently afforded specific explanation, item by item, in my last financial exposition, that I will not trouble the Council with repetition.

"Reverting to the main point, the Council will bear in mind that the amount now set down for the cash balance in India is £21,640,143, or 21½ millions. This is the amount which my Hon'ble friends consider excessive. But, in the first place, it is to be remembered full one-third of this money *is not our own*. There are 2½ millions (£2,648,185) loan money which we owe to the Public Works Department, being the unexpended balance of monies borrowed for Canals and State Railways. There are 3½ millions belonging to the Railway Department, being the unexpended residue of capital raised for the construction of the lines. There is 1½ million of undrawn monies of the discharged 5 per cent. loan, monies which are the property of the national creditors, and payable on demand at any moment. Then there are £750,000 of Secretary of State's bills outstanding, which represent sums received in England and re-payable on presentation of the drafts in India. These

several items make up an aggregate of full 8 millions, which, deducted from the 21½ millions, leave 13½ millions, which would represent as nearly as possible the real cash balance properly belonging to Government at the present time. And it is only by calculating this just abatement that a true idea of the existing cash balance can be obtained.

"Now, is the sum of 13½ millions too large an amount of cash balance for the ordinary service of Government? I say it not too large, but is really a proper amount. Remember the amount in question is for the month of April, a time of year when the cash balance ought to be "flush." As is well known, there is a flow and an ebb in the cash balances. The autumn is the slack time. Experience of many years has shown that there will be a difference of more than 3 millions between the spring April, and the autumn October. If, then, there are 13½ millions now (April), there will be 10 millions in October. Then, on the principle of the beam being no stronger than its weakest part, we have to consider whether 10 millions in October represent more than a safe sum, wherewith to carry on the public service at that period of the year. I unhesitatingly affirm that in the autumn the cash balance ought not to be allowed to fall below 10 millions. This is essentially a matter of experience. And I confidently appeal to every Accountant General, to every person who has had anything to do with these affairs, as to whether the above statement is not substantially correct.

"It has been indeed said that some of my predecessors, and especially Mr. Laing, declared that a cash balance of 10 millions should be ample. Others among my predecessors have even expressed a hope that a lesser sum might be made to suffice. When Mr. Laing spoke of ten millions, however, he did not apparently mean the sum which we ought to have at the maximum, or at the minimum period. He probably meant approximately the average sum for the whole year. In that case the calculation would scarcely differ from that which I have just made.

"At the same time, however, Mr. Laing uttered some words of wisdom which seem to have been forgotten by those who criticise the present cash balances, but which may well be quoted here. He said (in his financial statement of April 1862):—

"'We could, in case of need, get over two or three little wars, or the first year of a great war, without either loans or new taxes, and I earnestly trust that no Government of India will ever leave itself without this, which is the first and best of all reserves, an available £3,000,000 or £4,000,000 in hard cash, on which it can lay its hands at any moment.'

"In the above sentiment of Mr. Laing's, I cordially concur. Considering the circumstances in which we are placed in this country, and the complications which might at any moment arise, we ought to have a *moderate* cash reserve in our Treasury, available on the instant. According to Mr. Laing's authority (which has been erroneously cited against me), we ought to have 10 *plus* 4, or 14 millions of cash balance at least. And I maintain that, after the necessary abatements, our real cash balance is under 14 millions: and is, from this point of view, not at all excessive.

"It is true that Mr. Laing and others among my predecessors anticipated a reduced cash balance after the completion of the lines of railway and electric telegraph.

"But since the time of Mr. Laing, and even since the time of my immediate predecessor Mr. Massey, there has been a considerable expansion of our financial transactions which would *primâ facie* render necessary a larger cash balance than formerly. In Mr. Laing's time the receipt side of the cash account of the Government of India showed 67 millions (1861-62). In the present year, 1872-73, the same account is swollen to 115 millions. A part of the difference is due to certain items being included in the latter account, which were not in the former. But the greater part is due to real growth of

our affairs—increase of revenue—construction of reproductive public works with borrowed capital—extension of the railway transactions—increase of local funds and provincial services—accretion of deposits, and the like. One main item, indeed, which greatly influences the cash balances which used technically to be called 'debt,' and is now called 'advances and deposits,' almost exactly admits of comparison between the two periods. In 1861-62 it stood at 10 millions. For 1872-73 it stands at 18 millions. Inasmuch, then, as our account has grown so much, it is *primâ facie* to be expected that we should have a much larger cash balance now than then.

"We recollect, of course, that since that time the railway and the telegraph have facilitated the remittance of money and the transport of specie. And had it not been for these agencies, we must have maintained a much larger cash balance than we now maintain. It is owing to this, indeed, that we are able now-a-days to do with an amount *not generally* larger than that with which we did years ago.

"But it cannot be expected that with the vast extension of our business, we can manage to reduce our cash reserve.

"Again, if the cash balance follows, as it naturally would follow, the course of the State finance, then at those times when there is deficit of income, as compared with ordinary expenditure, the cash balance must be low. Hence it must happen that when the said finance recovers itself, when the deficit is turned into surplus, the cash balance will be high. A period of comparative repletion succeeds the period of depletion. Such is the case now, when the finance of the two last years is resulting in a surplus of more than four millions.

"And as a matter affecting the credit and prestige of Government, it is desirable that the Treasury should be full—fuller than it was in Mr. Laing's time. In those days, our finance was successfully righting itself after the war of the mutinies, and its ultimate prosperity was held to be assured. After that we were obliged to embark on public works to an extent not originally contemplated, and to borrow money on that account. In the midst of the borrowing for this extraordinary object, doubts arose whether the ordinary expenditure could be kept within the limits of income. To this were added some misfortunes in opium, in trade, and in other respects. Some deficit occurred, and more was threatened. The cash reserves fell to a low point. All this caused apprehension as to the stability of our finance (apprehension now happily dissipated). Then, as we began to succeed in strengthening our position, we raised the cash reserves. And the possession of such reserves is an element in public confidence. I say then that in consequence of all that passed some three years ago, it is important that our finance should be placed in a strong, even in an exceptionally strong, position. And the possession of a large reserve conduces to that end.

"Besides this, which may be called the general reason for maintaining a high cash balance at the present time, there is a special reason relating to the year just past, 1871-72, which is this. During that year we intended, if possible, to reduce the interest on a considerable portion of the national debt. Last year I indicated, so far as might be consistent with the necessary official reserve, that there might be some reason of this sort. Now, however, there need be no hesitation in pointing to this as an obviously cogent reason. Undoubtedly the existence, so well known, of the large sums of cash available in our coffers operated as an inducement to the public creditor to accept our terms of reduced interest, for fear that refusal might lead to discharge of the loan altogether! My Hon'ble friend Mr. Bullen Smith has to-day endeavoured to question the profitableness of that operation to the State, and the propriety of the small borrowing which took place that year in England; and he dwelt on the loss involved in the retention of large reserves. Now, does my Hon'ble friend recollect the declared profit per annum of that operation, £93,000 per